TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~931~~. ~~245~~ 240

MORRIS L. GLADSON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED MARCH 4, 1895.

(15,815.)

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a STATE OF MINNESOTA:

In Supreme Court, April Term, 1894.

STATE OF MINNESOTA, Respondent,
vs.
M. L. GLADSON, Appellant.

"Copy."

Judgment-roll and Return.

(Endorsed:) Filed Feb'y 10, 1894. C. P. Holcomb, clerk.

1 STATE OF MINNESOTA:

In Supreme Court, April Term, 1894.

STATE OF MINNESOTA, Respondent,
vs.
M. L. GLADSON, Appellant.

Proceedings in Justice Court.

STATE OF MINNESOTA, } *ss:*
County of Pine, }

The complaint of Joseph Thomas, of said county, made before John Hogan, Esq., one of the justices of the peace in and for said county, who, being duly sworn, on his oath says, that on the 22d day of July, 1893, at the village of Pine City, in said county, M. L. Gladson, then and there an engineer acting for the Saint Paul and Duluth Railroad Company, a common carrier operating a railway in said State, and then and there employed and engaged by said common carrier in operating that certain locomotive engine drawing a regular passenger train run by
2 said common carrier, did wilfully and maliciously refuse and fail to stop said train at its station in the village of Pine City, said village of Pine City then and there being the county-seat of the county of Pine in said State, a sufficient length of time or for any length of time whatever to let off and discharge this complainant, who was then and there a passenger upon said train en route to said village of Pine City, and having then and there duly procured passage thereto of said common carrier and then and there desiring and requesting said M. L. Gladson to so stop said train. That said train is and was at said time and at all times has been a regular passenger train run by said common carrier from the city of Saint Paul in said State to the city of Duluth in said State, and no further, and was not at said time and at no time has been a train entering this State from another State or going from this State to another State, or a transcontinental train, against the

form of the statute in such case made and provided, and against the peace and dignity of the State of Minnesota, and prays that the said M. L. Gladson may be arrested and dealt with according to law.

JOSEPH THOMAS.

Subscribed and sworn to before me this twenty-second day of July, A. D. 1893.

JOHN HOGAN,
Justice of the Peace, Pine County, Minn.

Endorsed: Filed July 24th, 1893. E. Veenhoven, justice of the peace.

3 STATE OF MINNESOTA, } ss:
County of Pine, }

The State of Minnesota to the sheriff or any constable of said county:

Whereas, Joseph Thomas has this day complained in writing to me, on oath, that on the 22d day of July, A. D. 1893, at the village of Pine City, in said county, M. L. Gladson, then and there an engineer acting for the Saint Paul & Duluth Railroad Company, a common carrier operating a railway in said State, and then and there employed and engaged by said common carrier in operating that certain locomotive engine drawing a regular passenger train run by said common carrier, did wilfully and maliciously refuse and fail to stop said train at the station in the village of Pine City, said village then and there being the county-seat of the county of Pine in said State, a sufficient length of time or for any length of time whatever to let off and discharge this complainant, who was then and there a passenger upon said train en route to said village, and having then and there duly procured passage thereto of said common carrier and then and there desiring and requesting said M. L. Gladson to so stop said train.

That said train is and was at said time and at all times has been a regular passenger train run by said common carrier from the city of Saint Paul in said State to the city of Duluth in said State, and no further, and was not at said time and at no time has been a train entering this State from another State or going from this State to another State, or a transcontinental train, and prayed that

4 the said M. L. Gladson might be arrested and dealt with according to law.

Now therefore you are commanded forthwith to apprehend the said M. L. Gladson and bring him before E. Veenhoven, Esq., one of the justices of the peace in and for said county, to be dealt with according to law.

Given under my hand this 22d day of July, A. D. 1893.

JOHN HOGAN,
Justice of the Peace.

STATE OF MINNESOTA, } ss:
County of Pine, }

I hereby certify that by virtue of the within warrant, I have arrested the within-named defendant and have him now before the court in custody.

Dated this 24th day of July, A. D. 1893.

Fees.

Mileage, 26 miles	$2 60
Service	25
	$2 85

J. McLAUGHLIN, *Sheriff.*
P. LAWLESS, *Dep. Sheriff.*

Endorsed: Filed July 24th, 1893. E. Veenhoven, justice of the peace, Pine Co., Minn.

5 *Transcript of Docket.*

STATE OF MINNESOTA, }
County of Pine. }

In Justice Court, before E. Veenhoven, Justice of the Peace.

STATE OF MINNESOTA, Plaintiff, }
vs.
M. L. GLADSON, Defendant. }

To the district court of Pine county, Minn.:

An appeal having been made from the judgment rendered by me in said cause, I hereby make return of the proceedings had before me therein, pursuant to the statute, as appears from my docket, viz:

STATE OF MINNESOTA, }
County of Pine, }

In Justice Court, before E. Veenhoven, Justice of the Peace.

STATE OF MINNESOTA, Plaintiff, }
vs.
M. L. GLADSON, Defendant. }

July 22d, 1893, Joseph Thomas appeared before John Hogan, justice of the peace in and for Pine county, Minnesota, and on his oath made complaint that M. L. Gladson, on the 22d day of July, 1893, at the village of Pine City, in said county, then and there an engineer acting for the St. Paul & Duluth Railroad Company, a common carrier operating a railroad in said State, and then and there employed and engaged by said common carrier in operating

that certain locomotive engine drawing a regular passenger train run by said common carrier, did wilfully and maliciously refuse and fail to stop said train at its station in the village of Pine City,
6 then and there being the county-seat of the county of Pine in said State, a sufficient length of time or for any length of time whatever to let off and discharge this complainant, who was then and there a passenger upon said train en route to said village of Pine City, and having then and there duly procured passage thereto of said common carrier and then and there desiring and requesting said M. L. Gladson to so stop the said train.

That said train is and was at said time and at all times has been a regular passenger train run by said common carrier from the city of St. Paul in said State to the city of Duluth in said State, and no further, and was not at said time and at no time has been a train entering this State from another State or going from this State to another State, or a transcontinental train, against the form of the statute in such case made and provided, and against the peace and dignity of the State of Minnesota, and prays that the said M. L. Gladson may be arrested and dealt with according to law.

The said John Hogan, justice aforesaid, issued thereupon a warrant for the apprehension of said M. L. Gladson, returnable at Pine City before E. Veenhoven, justice of the peace in and for said county, July 24th, 1893. Warrant returned with prisoner in custody.

The prisoner pleads not guilty on the charges against him contained in said complaint of Joseph Thomas, and further answers that the passenger train on which defendant was employed on the said 22d day of July, 1893, which passed through the village of Pine City, was a so-called limited passenger train running from the city of St. Paul to the city of Duluth
7 and connecting at West Duluth with another train of the St. Paul and Duluth Railroad Company carrying passengers from the last-named point to the city of West Superior in the State of Wisconsin; that the said train is a fast express train and run especially to carry and accommodate passengers between St. Paul, Minneapolis, Duluth and West Superior, and a large part of the business carried on by said train is the carrying of passengers to make connections with said other trains en route from points in the State of Minnesota to the city of West Superior in the State of Wisconsin; that said railroad company customarily sells through tickets for passage upon said train from points in the State of Minnesota to said West Superior in the State of Wisconsin as aforesaid, and customarily carries passengers going to said West Superior in said State of Wisconsin, and that passengers traveling to said West Superior were upon said train described in the complaint herein, as passengers on said 22d day of July, 1893, and said train was then doing interstate business.

The defendant then waived a jury trial.

A certified copy of an act of the legislature was then introduced.

Following persons were sworn in behalf of the prosecution: Joseph Thomas, L. Roberts, Fred. E. Horey and Fred. A. Hodge, and M. L. Gladson in behalf of the defense.

The case was then submitted to me for decision. After considering the testimony of the witnesses for the prosecution and defense, I find that the limited passenger train No. 3 is not a through railroad train entering this State from any other State, or a
8 transcontinental train of any railroad, and therefore must have stopped at Pine City, being county-seat.

Wherefore, I adjudge the defendant, M. L. Gladson, who was convicted of the offense charged, to pay a fine of twenty-five ($25) dollars and costs of this action, amounting to $9.55.

E. VEENHOVEN,
Justice of the Peace, Pine County, Minnesota.

Defendant made and filed a notice of appeal and due service thereof upon defendant. Also bond in the penal sum of one hundred dollars. Appeal thereupon allowed.

E. VEENHOVEN,
Justice of the Peace.

STATE OF MINNESOTA, }
County of Pine, } ss:

I hereby certify that I have compared the foregoing with the original entries in my docket, and that the same is a full and correct transcript thereof, and of all the proceedings had before me in said cause: that the bond and notice of appeal, together with all papers had before me therein, are herewith returned and attached, and numbered from 1 to 7 inclusive; and that, together with the foregoing transcript, they contain a full, correct and complete statement of all the proceedings had before me in said cause.

Given under my hand this 10th day of August, A. D. 1893.

E. VEENHOVEN,
Justice of the Peace.

Endorsed: Filed August 24th, 1893. Henry J. Rath, clerk.

9 STATE OF MINNESOTA, }
County of Pine. }

In Justice Court, E. Veenhoven, J. P.

STATE OF MINNESOTA }
vs.
M. L. GLADSON. }

To R. C. Saunders, county attorney of Pine county, Minnesota.

SIR: Please take notice that the above-named defendant M. L. Gladson has appealed and does hereby appeal from the judgment of Justice E. Veenhoven, of Pine county, dated the 24th day of July, 1893, adjudging him guilty of running a passenger train through the county-seat of Pine county, on the 22d day of July, 1893, without stopping to let off and take on passengers, and adjudg-

ing that he pay a fine of $25 and costs, to the district court of said Pine county.

This appeal is made upon questions of law and fact.

Dated July 24th, 1893.

LUSK, BUNN & HADLEY,
Attorneys for Defendant.

Endorsed: Due service of the within is hereby admitted July 24th, 1893. Robert C. Saunders, county attorney.

10 STATE OF MINNESOTA, } ss:
County of Pine, }

We, M. L. Gladson as principal, and Frank A. Seymour and William R. Merriam as sureties, acknowledge ourselves to owe and be indebted unto the State of Minnesota in the sum of $100, to be levied of our several goods and chattels, lands and tenements, to the use of said State, if default be made in the condition following, to wit:

The condition of this recognizance is such, that whereas the said M. L. Gladson was, in a justice court before E. Veenhoven, Esq., one of the justices of the peace in and for said county, found guilty of the offense of running a regular passenger train of the Saint Paul and Duluth railroad through the county-seat of Pine county, in said State, on the 22d day of July, 1893, and then and there failing and refusing to stop the same, and was, on the 24th day of July, 1893, adjudged to pay a fine of twenty-five (25) dollars and costs; and whereas, the said M. L. Gladson desires to appeal from said judgment to the district court of said county:

Now if the said M. L. Gladson shall personally be and appear before the said district court on the first day of the next general term thereof to be held in and for said county and shall abide the judgment of said court, and in the meantime shall keep the peace and *and* be of good behavior, and shall not depart thence without leave duly granted, then this recognizance shall be void; otherwise to remain in full force.

M. L. GLADSON. [SEAL.]
FRANK A. SEYMOUR. [SEAL.]
WILLIAM R. MERRIAM. [SEAL.]

11 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Frank A. Seymour and William R. Merriam being duly sworn say each for himself, that he is one of the sureties in the within recognizance; that he is a resident and freeholder of the State of Minnesota, and worth the amount of two hundred dollars, specified in the foregoing recognizance, above his debts and liabilities, and exclusive of his property exempt from execution.

FRANK A. SEYMOUR.
WILLIAM R. MERRIAM.

Subscribed and sworn to before me this 27th day of July, A. D. 1893.

EMERSON HADLEY,
[SEAL.] *Notary Public, Ramsey County, Minn.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 27th day of July, 1893, before me personally appeared Frank A. Seymour and William R. Merriam, known to me to be the persons described in and who executed the foregoing instrument as sureties, and they each acknowledged that they executed the same as their free act and deed.

EMERSON HADLEY,
[SEAL.] *Notary Public, Ramsey County, Minn.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On the 25th day of July, 1893, personally appeared before me M. L. Gladson, known to me to be the person described in and
12 who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

EMERSON HADLEY,
[SEAL.] *Notary Public, Ramsey County, Minn.*

I hereby approve the within recognizance and the sureties therein contained this 28th day of July, 1893.

E. VEENHOVEN,
Justice of the Peace.

The within recognizance filed the 28th day of July, 1893.

E. VEENHOVEN,
Justice of the Peace.

Minutes of Trial.

1st Day, September General Term, September 19, 1893.

STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

TUESDAY—2 p. m.

Court opened pursuant to adjournment, Hon. F. M. Crosby, district judge, presiding.

STATE OF MINNESOTA }
vs. }
M. L. GLADSON. }

County attorney moves for arraignment of defendant upon an appeal upon questions of law and fact, from a judgment rendered by E. Veenhoven, Esq., a justice of the peace of this county, finding

defendant guilty of running a passenger train through the
13 county-seat of Pine county, on the 22d day of July, 1893, without stopping to let off and take on passengers, and adjudging that he pay a fine of twenty-five ($25) dollars and costs. Lusk, Bunn & Hadley and J. D. Armstrong appearing for defendant. Defendant waives reading of complaint and judgment, states he is arraigned under his true name and pleads not guilty.

County attorney moves for trial, when following proceedings were had:

John Dunaiski,	called and sworn as a juror.			
Joseph Parro,	"	"	"	"
Hugh Algnire,	"	"	"	"
John Lyndon,	"	"	"	"
W. P. Gottry,	"	"	"	"
John Madden,	"	"	"	"
George Stevens,	"	"	"	"
Pat. Hogan,	"	"	"	"
Andrew Backstrom,	"	"	"	"
Joseph Youngbar,	"	"	"	"
George Kirk,	"	"	"	"
John Lind,	"	"	"	"

County attorney states case to court and jury, and calls S. G. L. Roberts, J. P. Buckley and P. Lawless, who were sworn and testify. State rests.

J. D. Armstrong, attorney for defendant, states case to court and jury, and calls E. L. Brown, who was sworn and testifies. Introduces written testimony as to organization and incorporation of railroad. Defendant rests.

All evidence having been introduced, and each party having rested, court charges the jury, who retire under charge of a sworn officer of the court to deliberate on a verdict.

14 Afterwards the jury return into court the following verdict:

STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

STATE OF MINNESOTA }
vs. }
M. L. GLADSON. }

We, the jury, find the defendant guilty.

W. P. GOTTRY, *Foreman.*

Defendant moves for a new trial on minutes of court. Motion denied.

County attorney moves for sentence. Court defers sentence until January 16th, 1894, and prisoner released on his own recognizance.

Adjourned.

A true record.

Attest: HENRY J. RATH, *Clerk.*

STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

STATE OF MINNESOTA }
vs.
M. L. GLADSON. }

To the honorable district court aforesaid:

The said defendant, M. L. Gladson, being aggrieved by the opinion, direction and judgment of said court in denying the motion for his discharge, made immediately upon the close of the testimony, and having duly excepted to the said direction, opinion and judgment of the said court, and also feeling himself aggrieved by the opinion, direction and judgment of said court in denying his motion for a new trial heretofore made, hereby presents to said court for its allowance his exceptions to the opinions, directions and judgment as aforesaid.

BUNN & HADLEY,
JAMES D. ARMSTRONG,
Attorneys for Defendant, 716 Pioneer Press Building, St. Paul, Minnesota.

STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

STATE OF MINNESOTA }
vs.
M. L. GLADSON. }

The above-entitled action came duly on for trial at the September, 1893, term of the above court, held at Pine City on the 19th day of September, 1893, Messrs. S. G. L. Roberts and Robert C. Saunders appearing for the State and Messrs. Lusk, Bunn & Hadley and J. D. Armstrong for the defendant, when the following proceedings were had:

S. G. L. ROBERTS sworn for the State.

Examined by Mr. SAUNDERS:

Q. You are a resident of Pine City?
A. Yes, sir.
Q. Which is the county-seat of Pine county?
A. Yes, sir.
Q. On the afternoon of the 22d day of July, 1893, where were you?
A. I was at Rush City, in the afternoon, in company with Mr. Joseph Thomas.
Q. What were you doing there, at Rush City?

A. We intended to return to Pine City that afternoon on the St. Paul & Duluth railroad; we purchased tickets for Pine City.

Q. You purchased that ticket with a view to taking the limited to Pine City, did you not?

A. Yes, sir.

Q. At what time does this train, called the limited, get to Rush City?

A. About 3.51.

Q. Did you get on board that train?

A. I got on board that train, yes, sir; myself and Mr. Thomas.

Q. Do you know who was the engineer in charge of the locomotive pulling that train; was it the defendant here, Mr. Gladson?

A. Mr. Gladson.

Q. When you got on the train did you present the ticket to the conductor?

A. Yes, sir, the conductor called for tickets.

Q. Who was he?

A. Fred. E. Horey.

Q. What did he do when you presented the tickets?

A. He called for our tickets; I handed him mine and Mr. Thomas handed him his, and he told Mr. Thomas that—he says, "We don't stop at Pine City," the train went straight through to Hinckley, he did not stop at Pine City.

Q. What is the regular arrival time of that train at Pine City?

17 A. 4.05.

Q. What is that train known by?

A. It is known as number three, up limited.

Q. Of what did that train consist; how was it made up?

A. It consisted of a locomotive and passenger cars.

Q. Baggage car?

A. I believe so.

Q. This failure to stop at Pine City on the 22d day of July, 1893, was in the county of Pine and the State of Minnesota?

A. Yes, sir.

Cross-examination by Mr. ARMSTRONG:

Q. How long have you lived in Pine City?

A. Going on two years now—two years last March.

Q. About how much of a place is it and was it the time of this occurrence?

A. I should judge it was about 800.

Q. About 800 inhabitants?

A. Yes, sir.

Q. Did this limited train you speak of—had it been in the habit of stopping at Pine City?

A. No, sir.

Q. And was not scheduled to stop there?

A. No, sir.

Mr. ROBERTS: I presume the court will take notice that Pine City is the county-seat of Pine county.

The COURT: You testify to that.

18 J. P. BUCKLEY sworn for the State.

Examined by Mr. ROBERTS:

Q. Are you employed by the St. Paul and Duluth Railroad Co.?

A. Yes, sir.

Q. In what capacity?

A. Passenger conductor.

Q. Were you during July at any time the conductor on the limited train number three, passenger train number three, of the St. Paul and Duluth railroad? Is that a regular passenger train?

A. Yes, sir; a regular passenger train; what we call the through trains.

Q. What time is that train scheduled to leave St. Paul?

A. 2.15 p. m.

Q. What time was it scheduled to arrive at Duluth?

A. 6.45.

Q. What was its run; where did it run from?

A. From St. Paul to Duluth.

Q. From St. Paul to Duluth—I am speaking now of the month of July; that was through all the month of July, was it, the 22d of July?

A. Well, I did not run the train myself the 22d of July.

Q. No; but during that month?

A. During the month.

Q. Did it at any time during the month of July last run out of this State into another State; the train itself?

A. No; I don't think it did during the month of July; it has run out of the State at different times.

Q. Is it running now out of the State?

19 A. Not at the present time.

Q. When did you refer to?

A. Oh, back; I don't know just exactly; say seven or eight months ago and, maybe, later than that.

Q. It did not regularly run over to Wisconsin, did it?

A. No, not as a regular thing.

Cross-examination by Mr. ARMSTRONG:

Q. When you said that this train is a regular train do you mean that it is regular in view of the fact that it is run every day?

A. Yes, sir.

Q. Now, you stated it ran between St. Paul and Duluth; does it not also carry passengers, express matter and mail for West Superior?

A. Yes, sir.

Q. You may state by what method the express matter, the mail and passengers are sent to West Superior?

A. It is transferred at West Duluth, sent off on the short line.

Q. On another train operated and owned by the same railroad company?

A. Same railroad company by one of its trains.

Q. West Superior is in the State of Wisconsin, is it not?

A. Yes, sir.

Q. Is it true that a large proportion of the passengers on this train are destined for West Superior?

A. Well, as an average thing I should judge about one-third; in that neighborhood.

Q. Their ticket is one continuous ticket, is it not?

20 A. One continuous ticket.

Q. That is a ticket which entitled them to a continuous ride from St. Paul to West Superior?

A. Yes, sir.

Q. This train is not scheduled to stop at Pine City, is it?

A. No, sir.

Q. And never has stopped there?

A. Never has until the——

Q. As a regular thing?

A. When I say it never has stopped at Pine City—we have stopped there to let the judge off.

Q. As a regular stop?

A. No; it has never been a regular stop; it has stopped——

Redirect examination by Mr. ROBERTS:

Q. And you stopped for a year a couple of years ago: for a year or a year and a half?

A. I don't recollect it.

Q. Yes; it stopped here for a year right along, right through, don't you remember that?

A. No, I don't; as a regular thing.

Q. About a year ago it stopped at Pine City?

A. Well, Mr. Gladson there pulled the train right along; I don't recollect whether we were scheduled to stop here a year ago or not.

Q. Now, during the month of July, this train met another at West Duluth, connected at West Duluth with the short-line train with this road?

A. For West Superior.

Q. With a short line at West Superior; connected at West Duluth with this short-line train?

—. ——.

Q. West Duluth is in this State?

21 A. Yes, sir.

Q. The train then continued on to Duluth and stopped there?

A. Yes, sir.

P. LAWLESS sworn for the State.

Examined by Mr. ROBERTS:

Q. You are one of the deputy sheriffs of this county?
A. Yes, sir.
Q. You recollect what occurred on the 22nd of July last at Hinckley; were you there?
A. Yes, sir.
Q. You made the arrest there of Mr. Gladson?
A. Yes, sir.
Q. You recognize him as the engineer in charge of the locomotive drawing that train?
A. Yes, sir.

State rests.

E. L. BROWN sworn for the defence.

Examined by Mr. ARMSTRONG:

Q. You occupy the position of master of transportation of the St. Paul & Duluth road, do you not?
A. Yes, sir.
Q. You occupied that position on the 22nd of July of this year and for a considerable time before, did you not?
A. Yes, sir.
22 Q. Your duties embrace the general supervision of all the train service of that company, do they not?
A. Yes, sir.
Q. At that time the company was operating over its road the train which has been designated here as number three, north-bound limited?
A. Yes, sir.
Q. What time did that train leave St. Paul?
A. 2.15 p. m.
Q. And arrived at Duluth when?
A. 6.45 p. m.
Q. On the 22nd day of July, 1893, where was that train scheduled to stop; at what points between the two cities?
A. Scheduled to stop at White Bear, Wyoming, Rush City, Hinckley, Carlton and West Duluth.
Q. At any other points?
A. No, except where we have crossings—were not scheduled.
Q. What distinguishes these towns you named from the other towns and for what reasons does the train stop there?
A. Junction points and for the purpose of registering; protection of trains off of branch lines; they stop at Hinckley for water and coal.
Q. Then as I understand it this train only stops at such points as are necessary for its immediate protection and the safety of the public?
A. That's all; yes, sir.

Q. That is for its good operation and the safety of the public?

A. Yes, sir.

Q. It did not stop at Pine City at that time; it was not scheduled to stop there?

23 A. No, sir.

Q. About what time did it pass through?

A. They are due here about 4.00; a few moments afterwards; I don't remember the exact time—4.00 o'clock.

Q. On what theory is this limited train run?

A. It is run for the convenience of through traffic.

Q. That is, through traffic between St. Paul, Minneapolis, Duluth and West Superior.

A. Yes, sir.

Q. And is not designed for local traffic?

A. No, sir.

Q. Is local traffic desired on this train?

A. No, sir.

Q. Does this train carry any traffic destined for West Superior?

A. Yes, sir.

Q. Of what character?

A. Passenger traffic, mail, express and baggage.

Q. Now, explain the operation of this train and the methods used in delivery of this traffic to West Superior.

A. The train is stopped at West Duluth for the transfer of passengers, baggage and mail, and the train is run, or that portion of it which is transferred, is run into West Superior on the train which is a continuation of this train.

Q. On another train, the property of and operated by the St. Paul & Duluth Railroad Company?

A. Yes, sir.

Q. The train at West Duluth waits until the limited arrives at West Duluth before it starts for West Superior?

A. Yes, sir.

24 Q. That is for the purpose of furnishing the passengers with facilities for a continuous journey from St. Paul to West Superior?

A. That is the object.

Q. The contract of passage, the ticket, is made for one continuous passage between one and the other, is it not?

A. Yes, sir.

Q. It is one continuous passage, is it not?

A. Yes, sir.

Q. Now, as regards the mail; that is carried under a contract with the U. S. Government?

A. Yes, sir.

Q. Does that contract, do you know, provide for penalties in case of a failure to deliver the mail on schedule time?

A. It does on every occasion.

Q. Now, taking that limited train, what is the additional expense made to the company by reason of the stop at Pine City?

A. From five to seven minutes; a loss of time of that.

Q. Which is valuable to the company?
A. Yes, sir.
Q. How much in other ways?
A. $1.60 to $1.25 for this stop.
Q. How do you figure that?
A. On the wear and tear of the property and extra fuel for the stoppage.
Q. Do you remember the day on which Mr. Gladson was arrested for failing to stop this train?
A. He has been arrested two or three times.
Q. Well, the first time; July the 22nd?
A. I do not recollect the exact date.
25 Q. The train that day was engaged in carrying mail, passengers, express and baggage for West Superior, as you have testified?
A. Yes, sir.
Q. You have charge of the arrangement of the time-table on the line of this road, have you not?
A. Yes, sir.
Q. Will you state what train service Pine City had on the 22nd day of July, 1893?
A. They had two passenger trains each way a day, and one local freight or accommodation each way; which would make three trains each way each day.
Q. Will you state what time the trains departed from Pine City, beginning with the trains going south?
A. I don't remember the time exactly; I can tell by referring to the time-card; that express is due here 4.38 in the morning; our mail train is due here at 12.37 p. m.
Q. State all the trains going south, first; and then all the trains going north?
A. The local freight leaves here at 8.10 a. m.
Q. When did these trains reach St. Paul?
A. The train leaving here at 4.38 in the morning reaches St. Paul—I am wrong on that train, 4.38; it is due out of here at 4.05 and reaches St. Paul at 7.15 in the morning; the local mail leaving here at 12.37 reaches St. Paul 3.50 p. m.
Q. How about the accommodation?
A. The accommodation reaches there at 6 p. m.
Q. Now, the trains going in the other direction?
A. Our mail going north leaves Pine City at 10.58 a. m.
26 Q. Arrives in Duluth when?
A. At 3 o'clock p. m.; and our express leaves Pine City 2.10 a. m., arrives in Duluth 6.50 a. m.; our accommodation leaves Pine City 1.38 p. m., arrives at Hinckley 2.55 p. m.
Q. That does not run to Duluth from Hinckley?
A. No, sir.

Cross-examination by Mr. ROBERTS:

Q. You say passengers were transferred from this train at West Duluth for West Superior?

A. Yes, sir.

Q. To a short-line train? Connects with a short-line train that there was there?

A. To a train connecting with the limited train; yes, sir.

Q. At the time of the commission of this offense charged here, this train went directly through from St. Paul to Duluth, did it not?

A. The train went through here; yes, sir.

Q. Passengers were simply transferred, and your express and mail matter transferred at West Duluth in this State?

A. Yes, sir.

Q. At the time of the commission of the offense charged here, how many different passenger trains were there, regular passenger trains—there was one going north which arrived at Pine City at 10.58; is that so? Going north?

A. I think that is the time.

Q. And the one coming south?

A. An accommodation going north in the daytime at 1.48.

27 Q. There is a general passenger train coming south in the daytime at 12.37?

A. Yes, sir.

Q. Now, in the night-time there is a regular passenger train going north, isn't there?

A. Yes, sir.

Q. That is due at 2.10, isn't it?

A. 2.10 I think; yes, sir.

Q. Going south is another passenger train due here at 4.10?

A. 4.05.

Q. That makes four passenger trains in a day?

A. Yes, sir.

Q. Now, there is an accommodation train going south you say in the morning; gets here at 8.10 in the morning?

A. Yes, sir.

Q. That was an accommodation train—where did that train run from?

A. From Hinckley to St. Paul.

Q. Directly to St. Paul at that time? Did it run directly to St. Paul; didn't it go by way of Grantsburg, Wisconsin?

A. That train went directly to St. Paul.

Q. Did not go over to Grantsburg?

A. Yes; the engine and car went to Grantsburg and back.

Q. And then back and then carried the train to St. Paul?

A. To St. Paul.

Q. What time was it due in St. Paul?

A. 6 o'clock p. m.

Q. A whole day on the ride then; from 8 o'clock in the

28 morning until 6 at night. That is your accommodation freight train, is it not?

A. Yes, sir.

Q. Was there any other combination train going south?

A. No, sir.

Q. To carry passengers?
A. No, sir.
Q. Was there an accommodation freight train, or combination freight train, carrying passengers going north, stopping at Pine City?
A. Yes, sir; one leaving here at 1.48.
Q. Where did that run from?
A. From St. Paul to Hinckley.

By Mr. ARMSTRONG:

Q. The object of employing this short-line train to transfer passengers to West Superior is to avoid bringing the other train up and losing time by that?
A. Yes, sir.

By Mr. ROBERTS:

Q. Did your contract with the United States Government require you to carry mail on that particular train?
A. Yes, sir; our contract compels us to carry the mail on any train they designate.

By Mr. ARMSTRONG:

Q. And they had designated that train, had they?
A. Yes, sir.

29 Defendant then introduced evidence showing that the Saint Paul and Duluth Railroad Company had existed as a corporation for a long time prior to the passage of the act in question; after which the case was closed.

The foregoing is all the testimony offered at such trial; and thereupon defendant moved the court for his discharge on the ground that the statute under which the complaint is made is unconstitutional on its face, not falling within the legitimate scope of the police power of the State, consequently being a taking of the property of this railroad company without due process of law; that even if it is not unconstitutional on its face, it is unconstitutional as applied to the train in controversy, in the first place being an attempt on the part of the State to regulate interstate commerce, and secondly, being an unlawful interference with and an attempt to regulate the United States mail.

The court then denied the motion, to which ruling the defendant duly excepted and the said exception was duly allowed by the court.

30 STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

STATE OF MINNESOTA }
vs.
M. L. GLADSON. }

The foregoing and attached exceptions being duly presented to this court on the sixteenth day of January, A. D. 1894 (that being one of the days of the September, A. D. 1893, general term, and the same term at which the defendant was tried), at the court-house in the village of Pine City, in the county of Pine and State of Minnesota; and being by me duly examined and found conformable to the truth of the case and containing all the testimony offered at said trial, are hereby allowed, signed and made part of the record thereof.

F. M. CROSBY,
District Judge.

Endorsed: Filed this 16th day of January, A. D. 1894. Henry J. Rath, clerk of district court, Pine county, Minn.

31 STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District, September, A. D. 1893, Term.

STATE OF MINNESOTA, Plaintiff, }
vs.
MORRIS GLADSON, Defendant. }

Now comes the defendant on this 19th day of September, A. D. 1893, and on the minutes of the Hon. F. M. Crosby, the judge of said court before whom defendant was tried, and all the records, files and proceedings had therein, moves for a new trial in the above-entitled action, on the grounds:

1. That the verdict of the jury is not justified by the evidence, and is contrary to law.

2. On account of errors in law occurring at said trial and duly excepted by defendant.

LUSK, BUNN & HADLEY,
JAMES D. ARMSTRONG,
Attorneys for Defendant,
716 *Pioneer Press Building, St. Paul, Minn.*

Endorsed: Filed October 10, 1893. Henry J. Rath, clerk.

32 STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judical District, September, A. D. 1893, Term.

STATE OF MINNESOTA, Plaintiff, }
vs.
MORRIS GLADSON, Defendant. }

This cause came on to be heard at the September, A. D. 1893, term (being the same term at which said action was tried) of said court, on the 19th day of September, 1893, on a motion for a new trial therein, J. D. Armstrong appearing for defendant and S. G. L. Roberts for the State.

After hearing counsel it is hereby ordered that said motion be and the same is hereby denied.

F. M. CROSBY,
District Judge.

Endorsed: Filed October 10, 1893. Henry J. Rath, clerk.

33 *Minutes of Judgment.*

— Day, September General Term, January 16, A. D. 1894.

STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

TUESDAY—10 a. m.

Court opened pursuant to adjournment, Hon. F. M. Crosby, district judge, presiding.

STATE OF MINNESOTA }
vs.
M. L. GLADSON. }

This day the defendant is brought into court to receive sentence, he having at a former day of this court been tried and found guilty of running a passenger train through the county-seat of Pine county, on the 22d day of July, A. D. 1893, without stopping to take on or let off passengers.

County attorney moved for sentence, and court passed sentence as follows:

"It is the sentence of the law, that you, M. L. Gladson, having been found guilty of the offense charged, do pay a fine of twenty-five (25) dollars and the costs of prosecution, amounting to thirty and $\frac{57}{100}$ (30.57) dollars, and in default of the payment thereof, that you be confined in the county jail until said fine and costs are paid, not exceeding thirty days."

Adjourned.

A true record.

Attest: HENRY J. RATH, *Clerk.*

34 STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

STATE OF MINNESOTA }
vs.
M. L. GLADSON. }

You will please take notice that above-named defendant hereby appeals to the supreme court of the State of Minnesota from the judgment of the said district court entered herein on the sixteenth day of January, A. D. 1894, and from the whole thereof.

Very respectfully,

BUNN & HADLEY,
JAMES D. ARMSTRONG,
Attorneys for Defendant, 717 *Pioneer Press Building, St. Paul, Minn.*

To Henry J. Rath, Esq., clerk of the district court aforesaid, and to Hon. H. W. Childs, attorney general.

STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

STATE OF MINNESOTA }
vs.
M. L. GLADSON. }

It is hereby ordered that the appeal in the above-entitled cause shall stay the execution of the judgment and all proceedings in reference thereto, upon the defendant's recognizing to the State of Minnesota in the sum of one hundred (100) dollars, with sufficient sureties for his personal appearance at the supreme court at
35 the term thereof to be held on Tuesday, the 3d day of April, A. D. 1894, and enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace and be of good behavior.

Dated January 16th, A. D. 1894.

F. M. CROSBY,
District Judge.

STATE OF MINNESOTA, }
County of Pine, } *ss:*

We, M. L. Gladson as principal, and William R. Merriam and Frank A. Seymour as sureties, acknowledge ourselves to owe and be indebted unto the State of Minnesota in the sum of one hundred (100) dollars, to be levied on our several goods and chattels, lands and tenements, to the use of said State, if default be made in the condition following, to wit:

The condition of this recognizance is such, that whereas the said M. L. Gladson was, in the district court for the county of Pine and State of Minnesota, at the September, A. D. 1893, general term thereof, found guilty of the offense of running a regular passenger train of the Saint Paul and Duluth Railroad Company through the county of Pine, in said State, on the 22d day of July, 1893, and then and there refusing to stop the same at the county-seat thereof; and the said M. L. Gladson desiring to appeal from the judgment in said matter so soon as the same shall be entered;

Now if said M. L. Gladson shall personally be and appear at the said supreme court at the next term thereof to be held on Tuesday, the third day of April, A. D. 1894, and enter and prosecute
3 his exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace and be of good behavior, then this recognizance shall be void; otherwise to remain in full force.

M. L. GLADSON. [SEAL.]
WILLIAM R. MERRIAM. [SEAL.]
FRANK A. SEYMOUR. [SEAL.]

In presence of—
JAMES D. ARMSTRONG,
JOHN F. FITZPATRICK,
As to M. L. G.
GEO. C. POWER.
H. M. PARKER.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

William R. Merriam and Frank A. Seymour being duly sworn say each for himself, that he is one of the sureties in the foregoing recognizance; that he is a resident and freeholder of the State of Minnesota, and worth the amount of two hundred dollars, above his debts and liabilities, and exclusive of his property exempt from execution.

WILLIAM R. MERRIAM.
FRANK A. SEYMOUR.

Subscribed and sworn to before me this 15th day of January, A. D. 1894.

GEO. C. POWER,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

37 On this 15th day of January, 1894, before me personally appeared William R. Merriam and Frank A. Seymour, to me known to be the persons described in the foregoing recognizance as sureties, and they each acknowledged that they executed the same as their free act and deed.

GEO. C. POWER,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 16th day of January, 1894, personally appeared before me M. L. Gladson, to me known to be the person described and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

JAMES D. ARMSTRONG,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

Endorsed.

The foregoing recognizance is hereby approved this 16th day of January, 1894.

F. M. CROSBY,
District Judge.

Due service of the within notice of appeal, order staying proceedings, and recognizance on appeal, is hereby admitted this 16th day of January, 1894.

H. M. CHILDS,
Attorney General.
HENRY J. RATH,
Clerk of District Court, Pine County, Minn.

Filed January 18th, 1894.

HENRY J. RATH,
Clerk of District Court.

38 STATE OF MINNESOTA, }
County of Pine. }

District Court, First Judicial District.

STATE OF MINNESOTA }
vs. }
M. L. GLADSON. }

STATE OF MINNESOTA, } ss:
County of Pine, }

I, Henry J. Rath, clerk of the district court for the county of Pine and State of Minnesota, do hereby certify and return to the honorable, the supreme court of said State, that I have compared the foregoing papers-writing with the original return and transcript of the justice of the peace, motion for new trial, order denying new trial, exceptions, minutes of trial, minutes of judgment, notice of appeal, order staying execution of judgment and recognizance on appeal, in the action therein entitled, now remaining of record in my office, and that the same are true and correct copies and transcripts of said originals and the whole thereof.

Witness my hand and the seal of said court this 26th day of January, A. D. 1894.

[District Court Seal, Pine Co., Minn.]

HENRY J. RATH, *Clerk.*

39 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1894.

WEDNESDAY MORNING, *January* 16, *A. D.* 1895—9.30 o'clock.

Court convened pursuant to adjournment, all the justices being present.

STATE OF MINNESOTA, Respondent, *vs.* M. L. GLADSON, Appellant. } Cal. No., 192. Reg. No., 8679.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.

A true record.

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

[Endorsed:] 8679. State of Minnesota supreme court. State of Minnesota *vs.* M. L. Gladson. Copy of minutes of argument. Filed Jan'y 16, A. D. 1895. D. F. Reese, clerk.

40 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1894.

STATE OF MINNESOTA, Respondent, *vs.* M. L. GLADSON, Appellant. } No. 192. Appeal from District Court, First Judicial District, County of Pine.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1894, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered January 16th, A. D. 1895.

By the court.

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

[Endorsed:] No. 8679. State of Minnesota supreme court. State of Minnesota *vs.* M. L. Gladson. Copy of order for judgment. Filed January 16, A. D. 1895. D. F. Reese, clerk. Entered on page —.

41 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1894.

STATE OF MINNESOTA, Respondent,
vs.
M. L. GLADSON, Appellant. } No. 192.

Pursuant to an order of court duly made and entered in this cause on the sixteenth day of January, A. D. 1895—

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the first judicial district, sitting within and for the county of Pine, be, and the same hereby is, in all things affirmed.

Dated and signed this 16th day of January, 1895.

By the court.

Attest: D. F. REESE, *Clerk.*

42 [Endorsed:] State of Minnesota supreme court. State of Minnesota *vs.* M. L. Gladson. Transcript of judgment. Filed Jan'y 16, A. D. 1895. D. F. Reese, clerk.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 16th day of January, A. D. 1895.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk,*
By J. L. HELM, *Deputy.*

43 [Endorsed:] No. 8679. State of Minnesota supreme court. State of Minnesota, respondent, against M. L. Gladson, appellant. Judgment-roll.

(Endorsed:) Filed Jan'y 16, 1895. D. F. Reese, clerk. Seal of the supreme court, State of Minnesota.

4 8679.

TATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1894.

STATE OF MINNESOTA, Respondent,
vs.
M. L. GLADSON, Appellant. } No. 192. Syllabus.

Held, ch. 60, Laws 1893, requiring railroad companies to stop all gular passenger trains at county-seats is not unconstitutional or id either as being an unreasonable regulation or as interfering th interstate commerce.

Held further, said statute is not void as to a train carrying U. S. ail which also carries passengers between points within this State.

Judgment affirmed.

8679.

ATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1894.

STATE OF MINNESOTA, Respondent,
vs.
M. L. GLADSON, Appellant. } No. 192. Opinion.

Pine City is a village of 800 inhabitants, the county-seat of Pine county, and a station on the St. Paul & Duluth railroad. The defendant was an engineer on a passenger train on said railroad, and was arrested, tried, convicted, and sentenced in justice court for failing to stop his train at Pine City. He appealed to the district court, and was there again convicted and sentenced, and appeals to this court. The statute under which he was convicted is ch. 60, Laws of 1893, which reads as follows:

"All regular passenger trains, run by any common carrier operating a railway in this State, or by any receiver, agent, lessee or trustee of said common carrier, shall stop a sufficient length of time at its stations at all county-seats within this State to take on and discharge passengers from such trains with safety, and any engineer, conductor or other agent, servant or employé of, or any person acting for such common carrier, or for any receiver, agent, lessee or trustee of such common carrier, who violates any provision of this act is guilty of a misdemeanor and punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars or by an imprisonment in the county jail for not less than ten days nor more
46 than three months: Provided, however, that this act shall not apply to through railroad trains entering this State from any other State, or to transcontinental trains of any railroad."

This train was a fast express, running from St. Paul and Minneapolis to Duluth, stopping only at railroad crossings and junctions,

but not at stations on the way. Besides this train there were two other passenger trains and one accommodation train run each way every day which stopped at Pine City.

1. It is contended by appellant that this law is so unreasonable and oppressive as against the railroad company that it is unconstitutional and void. We are not of that opinion. While it seems to us that it is rather drastic legislation to compel this train, which is designed only for through traffic and stops at no other station en route, to stop at this one station while there are so many other trains to do the local business, still we cannot substitute our judgment for that of the legislature. There are reasons in support of the law on which the legislature has a right to come to the conclusion at which they arrived. Besides, this law does not apply alone to this train, this county-seat, and this railroad, but to all railroads, all county-seats, and, with a few exceptions, to all trains, and there are not the same reasons for assailing such a general law merely because it works hardship or inconvenience in exceptional cases as if it worked such hardship or inconvenience in all cases to which it applied.

It is a regulation of common carriers which the legislature has the power to impose, and it is certainly not so unjust and unreasonable that the courts should declare it void. See Chicago & Alton R. R. Co. *vs.* People, 105 Ill., 657, and I. C. R. R. Co. *vs.* People, 143 Ill., 434, where a similar law is held valid.

2. The evidence showed that while the train in question ran only to Duluth, one-third of the passengers it carried were carried
47 on through tickets to Superior, Wisconsin, and were transferred at Duluth to another train which connected with this one and carried those passengers to Superior. The train being to some extent in the business of interstate commerce, it is contended for this reason that the legislature had no right to impose this regulation on it. We do not agree with counsel for appellant. While it is not necessary to put it on so narrow a ground, we will say that this is not a regulation of interstate traffic, but most distinctively a regulation of local traffic for the purpose of which the train was required to be stopped.

3. The evidence showed that the train in question carried the U. S. mail, and it is contended that for this reason the regulation was void. The point is without merit.

The judgment appealed from should be affirmed. So ordered.

CANTY, *J.*

Buck, J., absent—sick—took no part.

48 [Endorsed :] No. 8679. State of Minnesota supreme court. State of Minnesota, respondent, *vs.* M. L. Gladson, appellant. Copy of opinion and syllabus. Original filed June 1st, 1894. C. P. Holcomb, clerk. April term, A. D. 1894. Canty, J.

49 STATE OF MINNESOTA:

In Supreme Court.

THE STATE OF MINNESOTA, Respondent and Plaintiff,
vs.
M. L. GLADSON, Appellant and Defendant.

Now comes the said defendant and appellant above named, whose full name is Morris L. Gladson, and alleges that in the above-entitled cause this court in its decision has committed a manifest error against the said defendant, and thereupon the said defendant prays a writ of error to the Supreme Court of the United States in accordance with law.

And the said defendant assigns the following errors in the aforesaid judgement of this court, namely:

This court in and by the said judgment held that a certain statute of the State of Minnesota, viz., chapter 60 of the laws of the said State for the year 1893, was valid and constitutional.

Second. The court in and by said judgment adjudged that said statute did not violate that clause of the Constitution of the United States which confers upon Congress the power to regulate commerce between the States.

Third. In and by said judgment the court adjudged that the claim and plea of the said defendant to the effect that said statute violated the said clause of the Constitution of the United States be overruled and held bad.

50 Fourth. In and by said judgment the court adjudged that said statute of Minnesota was a valid and lawful police regulation, overruling therein and thereby the claim of said defendant that it was not a police regulation and was invalid under and by virtue of the said clause before mentioned of the Constitution of the United States.

Fifth. In and by said judgment the court adjudged that the said statute was valid and constitutional, and thereby overruled and adjudged against the said defendant's claim and plea therein that the same was unconstitutional as interfering with and burdening the power of Congress to establish post offices and post roads.

Dated the 28th day of January, 1895.

MORRIS L. GLADSON,
By BUNN AND HADLEY,
His Attorneys.

51 [Endorsed:] Morris L. Gladson, plaintiff in error, against State of Minnesota, defendant in error. Copy. Assignment of errors. Original filed Feb'y 1, 1895. D. F. Reese, clerk.

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between The State of Minnesota, plaintiff, and M. L. Gladson, defendant, wherein was drawn in question the validity of a statute of the State of Minnesota on the ground of the said statute being repugnant to the Constitution and laws of the United States and the decision was in favor of the validity of said statute, a manifest error hath happened, to the great damage of said M. L. Gladson, as by his complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

53 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and ninety-five.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States
for the District of Minnesota.
By LOUISE B. TROTT, *Deputy.*

Allowed by—
CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

54 [Endorsed:] 8679. Morris L. Gladson, plaintiff in error, against State of Minnesota, defendant in error. Writ of error.
Endorsed: Filed Feb'y 1, 1879. D. F. Reese, clerk.

55 Know all men by these presents that we, William R. Merriam and Frank A. Seymour, are held and firmly bound unto the State of Minnesota in the full and just sum of two hundred and fifty ($250) dollars, to be paid to the said State of Minnesota or its attorneys or assigns; to which payment, well and truly to be made,

we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, in the supreme court of the State of Minnesota, in a suit pending in said court between The State of Minnesota, plaintiff, and Morris L. Gladson, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Minnesota, citing and admonishing — to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next: Now, the condition of the above obligation is such that if the said Morris L. Gladson shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM R. MERRIAM. [SEAL.]
FRANK A. SEYMOUR. [SEAL.]

56 Sealed and delivered in the presence of—
WINTHROP G. HOYES.

Approved by—
CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

57 [Endorsed:] Morris L. Gladson, plaintiff in error, against State of Minnesota, defendant in error. Copy bond. Original filed Feb'y 1, 1895. D. F. Reese, clerk.

58 The United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Morris L. Gladson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota, this — day of January, in the year of our Lord one thousand eight hundred and ninety-five.

CHAS. M. START,
Chief Justice, Supreme Court of Minnesota.

To the State of Minnesota.

Due service of the above citation by copy is hereby admitted this 1st day of February, A. D. 1895.

H. W. CHILDS,
Attorney General of the State of Minnesota.

59 [Endorsed:] 8679. Morris L. Gladson, plaintiff in error, against State of Minnesota, defendant in error. Citation. Endorsed: Filed Feb'y 1st, 1895. D. F. Reese, clerk.

60 State of Minnesota Supreme Court.

STATE OF MINNESOTA, } ss:
Office of Clerk of Supreme Court, }

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between The State of Minnesota, plaintiff, against M. L. Gladson, defendant, including the opinion of the said supreme court therein, as appears from the original files and record of the said supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith and that the foregoing are copies of the bond on writ of error and approval thereof, assignments of error, as the same remain on file and of record in said supreme court of the State of Minnesota, and the original writ of error from the Supreme Court of the United States, with the allowance of the same, and the original citation issued thereon, with proof of service thereof, and that the foregoing constitutes a true, full, and complete return to said writ of error.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 16th day of February, A. D. 1895.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court, State of Minnesota.

Endorsed on cover: Case No. 15,815. Minnesota supreme court. Term No., 931. Morris L. Gladson, plaintiff in error, *vs.* The State of Minnesota. Filed March 4, 1895.

Supreme Court, U. S.
MAR 15 1897

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 240.

MORRIS L. GLADSON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

EMERSON HADLEY,
JAMES D. ARMSTRONG,
Attorneys for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 240.

MORRIS L. GLADSON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This case is before this Court on a writ of error directed to the Supreme Court of the State of Minnesota.

The plaintiff in error was found guilty and sentenced in a criminal prosecution for a violation of Chapter 60, of the General Laws of Minnesota, of the year 1893. This law provides as follows:

"All regular passenger trains, run by any common carrier operating a railway in this state, or by any receiver, agent, lessee, or "trustee of said common carrier, shall stop a sufficient length of time "at its stations at all county seats within this state to take on and "discharge passengers from such trains with safety, and any engineer, "conductor or other agent, servant or employee of, or any person "acting for such common carrier or for any receiver, agent, lessee or "trustee of such common carrier who violates any provision of this "act is guilty of a misdemeanor and is punishable by a fine of not less "than twenty-five dollars nor more than one hundred dollars, or "by imprisonment in the county jail for not less than ten days nor "more than three months; provided, however, that this act shall not

"apply to through railroad trains entering this state from any other "state or to transcontinental trains of any railroad."

The complaint against the plaintiff in error is, that on the 22nd day of July, 1893, at the village of Pine City, in Pine County, being an engineer acting for the St. Paul & Duluth Railroad Company, a common carrier operating a railroad in Minnesota and then and there engaged in operating a regular passenger train of said carrier, he refused and failed to stop his train at said village of Pine City, which was the county seat of Pine County. (Transcript of Record, Fols. 1 and 2.)

The plaintiff in error was arrested and pleaded not guilty; he further made a special answer, that said train was a limited passenger train running from St. Paul to Duluth, connecting at West Duluth with another train of said common carrier carrying passengers from said junction to West Superior in the State Wisconsin; that the train was a fast express train run especially to carry passengers between St. Paul and Minneapolis and Duluth and West Superior, and a large part of its business consisted in such carriage of passengers into Wisconsin; that the said carrier sold through tickets for passage on said train from points in Minnesota to said West Superior in Wisconsin; that on the day named in the complaint the said train carried passengers traveling to West Superior and the train was then doing interstate business. (Transcript of Record, Fols. 6 and 7.)

The plaintiff in error was convicted by the justice and appealed to the District Court of the State of Minnesota, for the County of Pine, on questions of law and fact. (Transcript of Record, Fols. 8 and 9.)

In the District Court he was convicted and a bill of exceptions allowed and signed. The bill of exceptions shows the following facts:

The plaintiff in error was the engineer of the train in question, known as "the limited," leaving St. Paul at 2:15 P. M., arriving at Duluth at 6:45 P. M. He failed to stop the train at Pine City, which was a village, having a population of about eight hundred, the county seat of Pine County. (Transcript of Record, Fol. 17.) The train was not scheduled to stop there. (Fol. 17.) This train carried passengers, United States mail, and express, between St. Paul and Duluth and St. Paul and West Superior. The business for West Superior was transferred to a connecting train of the same carrier at West Duluth in Minnesota. About one-third of its business was traffic from points in Minnesota destined to West Superior, in Wisconsin. (Transcript of Record, Fols. 19-23-25.) The West Superior passengers were carried on through tickets for a continuous ride from St. Paul to West Superior. (Transcript of Record, Fols. 20 and 24.)

Besides this "limited" train in question, said carrier ran two other passenger trains and an accommodation train each way every twenty-four hours, which stopped regularly at Pine City to take on and discharge passengers. (Transcript of Record, Fols. 25 and 27.) This "limited" train stopped at railroad crossings and junctions only. It was run as a fast train for through business, making only the stops necessary to protect itself and the public. (Transcript of Record, Fols. 22-23.)

Mail is carried by this "limited" train from St. Paul to Duluth and West Superior under a contract with the United States Government. (Transcript of Record, Fols. 19-24.)

It takes from five to seven minutes to make the stop at Pine City and costs an appreciable sum. (Transcript of Record, Fol. 24.)

The defendant moved the Court for his discharge upon all the evidence. The motion was made upon the grounds: First, that said statute is unconstitutional as being a taking of property of the railroad company without due process of law. Second, it is unconstitutional as being a void regulation of the state legislature of interstate commerce. Third, it is an unlawful interference with the United States mail. The motion was denied and proper exception taken. (Transcript of Record, Fol. 29.) The plaintiff in error was found guilty and sentenced to pay a fine of thirty dollars and fifty-seven cents, and in default of payment to be confined in the county jail until the fine was paid, not exceeding thirty days. (Transcript of Record, Fol. 33.)

From this judgment an appeal was taken to the Supreme Court of the State of Minnesota and the judgment of the trial court was by the Supreme Court affirmed and judgment entered in the Supreme Court on January 16th, 1895. (Transcript of Record, Fol. 41.) The decision of the Supreme Court is made on the ground that the statute in question does not violate the Constitution of the United States. (See opinion of Court, Transcript of Record, Fols. 45-47.)

ASSIGNMENT OF ERROR.

We assign as error: The judgment of the Supreme Court of Minnesota is erroneous; the judgment of the trial court should have been reversed; the judgment of the trial court was erroneous; and the motion of the plaintiff in error to dismiss should have been granted for the following reasons:

First. The statute under which the plaintiff in error was prosecuted is invalid because it is an unlawful regulation of interstate commerce by the state legislature and in conflict with the Constitution of the United States, which provides that Congress shall regulate commerce among the several states.

Second. The statute is invalid because it is an unlawful burden on the carriage of the United States mail and in conflict with the Constitution of the United States, which grants to Congress authority to establish post roads.

Third. If the statute is not wholly invalid but good as to some trains, it is invalid and inoperative when applied to the train in question, as that train was engaged in interstate commerce and carrying the mails under contract with the government of the United States.

ARGUMENT.

I.

THE STATUTE, UNDER WHICH THE PLAINTIFF IN ERROR WAS PROSECUTED, AS APPLIED TO THE TRAIN IN QUESTION, IS A REGULATION OF AND A HINDERANCE AND OBSTRUCTION TO INTERSTATE COMMERCE AND IS A VIOLATION OF THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

(a) *It appears from the record in this case, that the train was engaged in interstate commerce.* One-third of its business was the carriage of passengers and express matter from St. Paul and Minneapolis, in the State of Minnesota, to West Superior, in the State of Wisconsin, on contracts which covered the whole transportation.

It is claimed, however, that, because this particular train did not pass from Minnesota to Wisconsin but transferred its passengers and express matter destined for the State of Wisconsin to another train operated by the same company, which completed the transportation, therefore, this train was not engaged in *interstate commerce*, but only domestic or internal commerce.

This is not a new question before this Court. It has already repeatedly decided, that the criterion whether a particular instrumentality was used in interstate commerce is not whether that instrumentality itself passes from one state to another, but whether it is employed in the transportation of commerce where the transportation commenced in one state and extended into another. This point was passed upon in the case

The Daniel Ball, 10 Wall. 557-565.

The steamer, Daniel Ball, was engaged in transporting goods on Grand River, wholly within the State of Michigan, destined for other states, and goods brought from other states destined for places in the State of Michigan, but did not run in connection with or in continuation of any line of vessels or railway leading to other states. The Court held that she was engaged in interstate commerce and said: "So far as she was employed in transporting goods destined for other states or goods brought from without the limits of Michigan and destined to places within that state, she was engaged in commerce between the states, and however limited that commerce may have been she was so far as it went subject to the legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one state and some acting through two or more states, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress."

The same principle was applied in

Foster vs. Commissioners, etc., 22 How. 244.

In this case a tow boat and lighter was employed entirely in the waters of Alabama, but she was engaged in towing and lightering from vessels, which were engaged in foreign commerce and commerce between the states. The Court held that "the character of the navigation and business in which it was employed cannot be distinguished from that in which the vessels it towed or unloaded were engaged. The lightering or towing was but the prolongation of the voyage of the vessels assisted to their port of destination."

The principle is applied to railroads in

Norfolk, &c., R. R. Co. vs. Penn., 136 U. S. 114.

In that case the Court says: "By virtue of its connections and certain traffic contracts with other railroads the Norfolk and Western Railroad Company 'has become a link in a through line of road over which as a part of the business thereof freight and passengers are carried into and out of this Commonwealth.' That is to say, the business of the through line of railroad, of which the plaintiff in error forms a part, or in which it is a link, consists in a measure of carrying passengers and freight into Pennsylvania from other states and out of that state into other states. It certainly requires no citation of authorities to demonstrate that such business, that is, business of this through line of railroad, is interstate commerce. That being true, it logically follows that any one of the roads forming a part of or constituting a link in that through line is engaged in interstate commerce, since the business of each one of those roads serves to increase the volume of business done by that through line."

On the same point see

Wabash, &c., Ry. Co. vs. Illinois, 118 U. S. 557.

Harman vs. Chicago, 147 U. S. 396.

In the case at bar, not only was a large part of the passengers and express matter transported on the train destined to pass out of the State of Minnesota into Wisconsin and the whole journey made under one contract, but it also appears that the whole transportation was made by the same company. It merely used different cars and engines in performing different parts of the journey. Under the rulings of this Court it is clear that in so far as this train was carrying passengers and merchandise destined for West Superior, Wisconsin, it was engaged in interstate commerce, and further appears that such commerce was a very important part of its business.

(b) *The provision of the statute requiring passenger trains to stop at Pine City to let off and take on passengers is a regulation of commerce.* It is a hinderance and obstruction to the through traffic for which this train was operated. The effect of this statute is to provide that no passengers can pass over the line of road of the St. Paul & Duluth Railroad from St. Paul or Minneapolis to West Superior unless they delay from five to seven minutes in Pine City. It makes no difference if a train consists only of cars passing from St. Paul direct to West Superior. According to this statute it cannot run over the road unless it stops at each county seat to let off and take on

passengers; inferentially, it cannot run unless it carries passengers to and from each county seat on the line. Nothing can be clearer than that this is a regulation which affects commerce *directly*. It is a regulation of the commerce itself. It is not something that affects it merely incidentally. It makes the transportation from West Superior to St. Paul more expensive. It makes the journey from West Superior to St. Paul consume more time. If the train leaves St. Paul at the same time and travels at the same speed scheduled, in case it has to make this stop at Pine City, the connecting train must arrive in West Superior from five to seven minutes later than it otherwise would. It affects the traffic not only in Minnesota but also in Wisconsin. But it may be said that the expense is not greatly increased nor is the delay long. This is true in this particular case; but if the state has the power to make this train stop at county seats, it has the power to make it stop at every station on the road. It is evident that such a law would be so intolerable a regulation when applied to through traffic passing from one state to another that it might destroy in a large measure the usefulness of the rapid transportation of passengers and merchandise, which is now so common, between the different parts of the United States.

The mere suggestion of a law compelling all trains to stop at every station on the line of the road is sufficient to show that such a provision would be a regulation of commerce and that it would be a burden and obstruction to through traffic. If such a law was made to apply only to stations in towns of more than a certain population, the law would still be a regulation of commerce just the same, though, of course, the burden on commerce might not be so great; so, in case of a law such as that under consideration, requiring trains to stop at county seats, the burden on commerce is not so great as it would be if the law compelled the train to stop at every station, but it is nevertheless a regulation of commerce and a hinderance and burden on through traffic and is an exercise of the same power on the part of the state legislature.

In order to determine whether this statute is a regulation of interstate commerce, we are not to consider how seriously the interstate commerce may be interfered with in this particular case or how great a burden is placed upon it in this instance, but rather whether this regulation belongs to that class of regulations which regulate and obstruct interstate commerce.

It has been determined by this Court, that a state legislature cannot *tax* interstate commerce. We do not apprehend that it makes any difference how great or how small the tax is. It is of no importance whether the tax is so insignificant in amount as to be of no practical importance to the revenue of a company doing interstate business, or of a magnitude to seriously affect the net income of such a company. Such a tax comes from within the class of regulations that belong exclusively to Congress, and, therefore, whether great or small, such a tax cannot be levied by a state.

As was said by Mr. Justice Bradley in the opinion in

Philadelphia, &c., Steamship Co. vs. Penn., 122 U. S. 326,

speaking of the power of a state to tax interstate or foreign commerce: "If the power exists in the state at all it has no limit

but the discretion of the state and might be exercised in such a manner as to drive away that commerce or to load it with an intolerable burden seriously affecting the business and prosperity of other states interested in it and if those states by way of retaliation or otherwise should impose like restrictions the utmost confusion would prevail in our commercial affairs."

So in this case, if the state may compel railroad trains doing interstate business to stop to take on and let off passengers at one station on the line, it may compel it to stop at all stations.

This court has recently passed upon a statute similar to the one now under consideration in the case of

Illinois Central R. R. Co. vs. Illinois, 163 U. S. 142.

In that case it appears that the legislature of the State of Illinois had enacted a statute compelling all railroads to stop all regular passenger trains at county seats long enough to receive and let off passengers, and this court held, that this law as applied to a train engaged in interstate commerce and compelling it to turn aside from its regular route and run three and one-half miles to a station and stop to let off and take on passengers and then go back three and one-half miles to its regular interstate route was a direct burden on commerce and a regulation of interstate commerce by the state in violation of the constitution of the United States; but this court, in the opinion in that case, has said: "The question whether a statute, which merely required interstate railroad trains, without going out of their course, to stop at county seats, would be within the constitutional power of the state, was not presented and can not be decided upon this record."

But it appears to us that the distinction is one of degree rather than of principle. It may be that to compel a train to run seven miles and stop to take on and let off passengers would require ten times the delay and ten times the expense that a mere stop at a station, but is there really any other distinction between the two cases? Does not the statute operate as a regulation and a hindrance in both cases? Suppose, for example, a train, in passing across a state, passes through ten county seats: Might not a law compelling it to stop at each county seat to let on and discharge passengers be as much a regulation and as much a hindrance and obstruction to interstate commerce as the case in Illinois above cited? The delay to the train might be as great, the additional cost might be as much or more, and is there any reason or principle for saying that one is a regulation of commerce which a state may make and the other is not? The answer must be in the negative; and it goes without saying that if the state cannot compel a train to stop at ten county seats, if it passes through them, it cannot compel another train to stop at one county seat.

(c) *The statute in question is a regulation of interstate commerce that is not within the constitutional power of the state.*

It has been repeatedly decided by this court and we apprehend must be regarded as settled that the power granted to Congress by the constitution of the United States to regulate commerce among the several states is exclusive and that the failure or omission of

Congress to make express regulations upon any matter indicates its will that the subject shall be free from any restrictions or impositions.

Welton vs. State of Missouri, 91 U. S. 282.
Hall vs. DeCuir, 95 U. S. 485.
Weber vs. Virginia, 103 U. S. 344.
Walling vs. Michigan, 116 U. S. 446.
Pickard vs. Pullman Co., 117 U. S. 34.
Robbins vs. Shelby Tax. District, 120 U. S. 489.
Phil. & Southern Steamship Co. vs. Penn., 122 U. S. 326.
Leisy vs. Hardin, 135 U. S. 100-109.
Brennan vs. Titusville, 153 U. S. 289-302.

But although it has been uniformly held, that the power to make commercial regulations affecting interstate commerce lays exclusively with Congress, it is also settled that the states have power to enact laws, which, while they are not in themselves commercial regulations, do, nevertheless, in some degree indirectly affect interstate commerce. These may be considered in the nature of exceptions to the general rule that interstate commerce is subject to regulation by Congress exclusively.

While it may be difficult to give a comprehensive definition of the classes of regulations which affect interstate commerce and are still within the jurisdiction of state legislatures, there seems to be one rule that has been repeatedly applied by this court. It is this, that while a state may enact laws on the various subjects within their general jurisdiction that incidentally affect interstate commerce, the individual state has no authority to make regulations which are *commercial in their nature and directly regulate or burden interstate commerce.*

Thus the state has authority to enact police regulations in so far as their object is the protection of the lives, health, property or morals of the people, and whenever such laws have been passed with the honest purpose of protecting the people and have affected interstate commerce only incidentally and do not amount to direct regulations of interstate commerce, they have been recognized as valid, but, on the other hand, this court has not hesitated to declare laws which were claimed to be police regulations to be beyond the power of the states whenever their real purpose was to regulate commerce rather than protect the people. Upon this principle the court has recognized the right of the states to provide for the inspection of importations to protect its citizens from disease. *Railroad Co. vs. Husen, 95 U. S. 465;* for the inspection of imported oils to protect from explosion, *Patterson vs. Kentucky, 97 U. S. 501;* for the quarantine of immigrants, *Morgan Steamship Co. vs. Louisiana, 118 U. S. 455;* for licensing locomotive engineers on railroads, *Smith vs. Alabama, 124 U. S. 465, R. R. Co. vs. Alabama, 128 U. S. 96.* These and similar laws are not designed to regulate commerce and while they do affect interstate commerce indirectly, they are not commercial regulations, but are police regulations clearly designed for the protection of the people. But on the other hand, this court has held that the states cannot, under the form of police regulations, enact laws, which are merely commercial regulations and are a regulation of or burden upon interstate commerce and repeatedly declared such laws unconstitutional. Examples of this kind are laws compelling

non-resident salesmen to procure a license for the privilege of doing business. *Robbins vs. Shelby Taxing District, 120 U. S. 489;* laws prohibiting the sale of intoxicating liquor as applied to liquors brought from another state and sold in the original packages, *Leisy vs. Hardin, 135 U. S. 100;* laws compelling express companies to take out license, *Cruchter vs. Kentucky, 141 U. S. 47;* laws providing for the inspection of cattle on the hoof, *Minnesota vs. Barber, 136 U. S. 313;* laws compelling railroad trains to stop at county seats, *Ill. Cent. R. R. vs. Ills., 163 U. S. 142.*

This question is thoroughly discussed and the authorities reviewed by Mr. Justice Brewer in the opinion of the Court in the case of *Brennan vs. Titusville, 153 U. S. 289.* He says, on page 302:

"It is undoubtedly true that there are many police regulations which do affect interstate commerce, but which have been and will be sustained as clearly within the power of the State; but we think it must be considered in view of the long line of decisions that it is settled that *nothing which is a direct burden upon interstate commerce can be imposed by the State without the assent of Congress* and that the silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free."

Upon the same question in

Leisy vs. Hardin, 135 U. S. 100, 108,

Chief Justice Fuller says:

"And while by virtue of its jurisdiction over persons and property within its limits a State may provide for the security of the lives, limbs, health and comfort of persons and the protection of property so situated, yet a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State unless placed there by Congressional action."

In *Cruchter vs. Kentucky, 141 U. S. 47-59,*

Mr. Justice Bradley says:

"But the main argument in support of the decision of the Court of Appeals is that the act in question is essentially a regulation made in the fair exercise of the police power of the state. But it does not follow that everything which the legislature of a state may deem essential for the good order of society and the well being of its citizens can be set up against the exclusive power of Congress to regulate the operations of foreign and interstate commerce."

In *Railroad Co. vs. Husen, 95 U. S. 465,*

Mr. Justice Strong, speaking of the police power of a state, says: "What that power is it is difficult to define in a sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health and safety. As was said in Thorpe vs. R. R. Co., 27 Vt. 149, 'it extends to the protection of the lives, limbs, health, comfort and quiet of all persons and the protection of all property within the state,'" and speaking of the power of the state to enact police laws, he says: "While for the purpose of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with the transportation into or through the state

beyond what is absolutely necessary for its self-protection. It may not under the cover of exerting its police power substantially prohibit or burden foreign and interstate commerce."

In *Illinois Cent. R. R. Co. vs. Ills., 163 U. S. 142, 154,*

Mr. Justice Gray says: "The State may make reasonable regulations to secure the safety of passengers even on interstate trains while within its borders. But the State can do nothing which will directly burden or impede the interstate traffic of the company or impair the usefulness of its facilities for such traffic."

In *Hennington vs. Georgia, 163 U. S. 299-303,*

Mr. Justice Harlan in the opinion of the Court says:

"The well settled rule is that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects or is a palpable invasion of the rights secured by the fundamental law, it is the duty of the Courts to so adjudge and thereby give effect to the Constitution."

Moreover, the law in question has none of the elements of a police regulation, in the sense in which that term is usually used. The term "police power" is said to be founded on the principle "that every person ought so to use his property as not to injure his neighbors." It is said by Justice Miller in the *Slaughter House Cases, 16 Wall. 36-62:* "It extends to the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the state, and persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the state." And in *Mugler vs. Kansas, 123 U. S. 666,* it is said to extend "to the protection of the lives, the health and property of the community against the injurious exercise by any citizen of his own rights."

An examination of the law under consideration shows that it was not intended for the protection of the people or their property. On its face it is merely a commercial regulation. Its evident purpose is to give the county seats of the state increased railroad facilities and this without regard to the necessity therefor. It makes no difference how many trains there may be, they are all required to stop at county seats except "through railroad trains entering this state from any other state or transcontinental trains." The record in this case shows that the village of Pine City had other trains, besides the one involved in this case, sufficient to provide adequate accommodations for its traffic. Pine City is a small village of about eight hundred inhabitants and besides this through "limited" train, this road ran two regular passenger trains and one mixed train each way every day, which stopped at that place. No question could be made but that the railroad company thereby gave reasonable accommodations to the town. The question is whether the state can, without regard to the reasonableness of the rule, compel every train to stop at all county seats, even though such a regulation does burden interstate commerce. It seems clear that such a regulation has for its object the control of commerce and is not intended for the protection of the lives, limbs, health or property of the people.

(d) But it is claimed that even if the constitution has given to Congress the exclusive power to regulate interstate commerce, yet the states have not surrendered the right to regulate their domestic commerce and in as much as this train was engaged in business that was entirely within the state as well as interstate commerce, that therefore the state has as much the right to regulate it as Congress.

The answer to this is, that, while the state has the undoubted right to regulate domestic commerce, it must make such regulations as will apply to it without interfering with commerce between the states.

If, for example, a railroad did not give reasonable facilities to a town on its line, it is within the power of the state to make regulations that will insure a reasonable railroad service to the town, but the state must so frame its regulations that they will apply to domestic commerce and not include interstate traffic.

In the case of *Crutcher vs. Kentucky*, 141 U. S. 47, the question was as to the constitutionality of a law requiring express companies to obtain a license before doing business in that state, and it was claimed that this law could be sustained as a regulation of domestic commerce, as the company in question did business that was local as well as interstate business; but it was held that inasmuch as this law affected the whole business of the company, it was a burden on interstate commerce, but that a license fee imposed exclusively on express business carried on wholly within the state would not be subject to that objection.

The same point was raised in *Leloup vs. Mobile*, 127 U. S. 640-647, where the question was as to the constitutionality of a law requiring a telegraph company to take out a license. Mr. Justice Bradley, in the opinion, says: "But it is urged that a portion of the telegraph company's business is internal to the state of Alabama and therefore taxable by the state. But that fact does not remove the difficulty. The tax affects the whole business without discrimination. There are sufficient modes in which the internal business, if not already taxed in some other way, may be subjected to taxation without the imposition of a tax which covers the entire operations of the company."

If there are county seats in the State of Minnesota where the railroads running to them do not furnish reasonable facilities for domestic traffic, the state will have no difficulty in making regulations that will meet that difficulty without affecting trains doing interstate business.

II.

The statute also operates to hinder and delay the carriage of the United States mail. The United States mail was being carried upon this train by contract between the Railroad Company and the U. S. Government. Under this contract the railroad was bound to carry the mail from St. Paul to Duluth and West Superior on this particular train and deliver it at a specified time.

If the state has the power to make arbitrary regulations as to where and how long this train shall stop, then it is within the power of the state to cripple and impede the United States mail service.

The delay in this case was not great, but if the state may arbitrarily delay the train five minutes at one station, we see no reason why it has not power to delay it the same length of time at every station.

There is nothing to indicate any reason why this particular train should stop at Pine City, except that it is the arbitrary pleasure of the state legislature that it should do so.

There is nothing to distinguish this case with regard to the interference in the carriage of the mails from the case of *Illinois Cent. R. R. Co. vs. Illinois*, except the length of the time the train is delayed.

We submit that the statute is in violation of the constitution of the United States and is beyond the power of the state, and the judgment of the Supreme Court of the State of Minnesota should be reversed.

EMERSON HADLEY,
JAMES D. ARMSTRONG,
Attorneys for Plaintiff in Error.

166-427

SUPREME COURT

OF THE UNITED STATES.

Office Supreme Court, U. S.
FILED.
MAR 19 1897
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OCTOBER TERM, 1896.

NO. 240

MORRIS L. GLADSON,
Plaintiff in Error,

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THE STATE OF MINNESOTA,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

H. W. CHILDS, Attorney General,

AND

GEO. B. EDGERTON,
Attorneys for Defendant in Error.

PIONEER PRESS CO., ST. PAUL, MINN.

The delay in this case was not great, but if the state may arbitrarily delay the train five minutes at one station, we see no reason why it has not power to delay it the same length of time at every station.

There is nothing to indicate any reason why this particular train should stop at Pine City, except that it is the arbitrary pleasure of the state legislature that it should do so.

There is nothing to distinguish this case with regard to the interference in the carriage of the mails from the case of *Illinois Cent. R. R. Co. vs. Illinois*, except the length of the time the train is delayed.

We submit that the statute is in violation of the constitution of the United States and is beyond the power of the state, and the judgment of the Supreme Court of the State of Minnesota should be reversed.

EMERSON HADLEY,
JAMES D. ARMSTRONG,
Attorneys for Plaintiff in Error.

166-427

SUPREME COURT

OF THE UNITED STATES.

Office Supreme Court, U. S.
FILED.
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OCTOBER TERM, 1896.

NO. ~~214~~ 240

MORRIS L. GLADSON,
Plaintiff in Error,

vs.

THE STATE OF MINNESOTA,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

H. W. CHILDS, Attorney General,

AND

GEO. B. EDGERTON,
Attorneys for Defendant in Error.

PIONEER PRESS CO., ST. PAUL, MINN.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM.

No. 937.

M. L. GLADSON,

Plaintiff-in-Error,

vs.

THE STATE OF MINNESOTA,

Defendant-in-Error.

BRIEF OF DEFENDANT-IN-ERROR.

I.

The plaintiff-in-error was a locomotive engineer in the employ of the St. Paul & Duluth Railroad Company as an engineer upon a passenger train belonging to the said company and running between the cities of St. Paul and Duluth. The village of Pine City is located upon the line of railroad of the said company on which the said train ran, and was throughout the year 1893, as it has ever since continued to be, the county seat of the county of Pine in the State of Minnesota.

An act was passed by the legislature of Minnesota in 1893 (Gen. Laws 1893, chap. 60) containing the following provision:

"All regular passenger trains run by any common carrier operating a railway in this state, or by any receiver, agent, lessee or trustee of said common carrier, shall stop a sufficient length of time at its stations at all county seats within this state to take

on and discharge passengers from such trains with safety, and any engineer, conductor or other agent, servant or employe of, or any person acting for such common carrier or for any receiver, agent, lessee or trustee of such common carrier, who violates any provision of this act is guilty of a misdemeanor and is punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months; provided, however, that this act shall not apply to through railroad trains entering this state from any other state, or to transcontinental trains of any railroad."

On July 22, 1893, the plaintiff-in-error ran his train through the said village, according to the custom and rules of the said company, without stopping the same. Complaint was thereupon made before a justice of the peace of the said county against him for such omission of duty under the said statute. He was arrested, tried and convicted in the court of such justice of the peace, and upon appeal to the district court, was again tried and convicted and sentenced to pay a fine of twenty-five dollars and costs. He thereupon appealed to the supreme court of the said state from the judgment of the district court, and the judgment appealed from was there affirmed.

The opinion of the supreme court, so far as it pertains to the views of the court, is as follows:

"It is contended by appellant that this law is so unreasonable and oppressive as against the railroad company that it is unconstitutional and void. We are not of that opinion. While it seems to us that it is rather drastic legislation to compel this train, which is designed only for through traffic, and stops at no other stations en route, to stop at this one station, while there are so many other trains to do the local business, still we cannot substitute our judgment for that of the legislature. There are reasons in support of the law on which the legislature had a right to come to the conclusion at which they arrived. Besides, this law does not apply alone to this train, this county seat, and this railroad, but to all railroads, all county seats, and, with a few exceptions, to all trains; and there are not the same reasons for assailing such a general law merely because it works hardship or inconvenience in exceptional cases, as if it worked such hardship or inconvenience in all cases to which it applied. It is a regulation of common carriers which the legislature has the power to impose, and it is certainly not so unjust and unreasonable that the courts should declare it void. See Chicago & A. R. Co. vs. People, 105 Ill. 657; and Illinois Cent. R. Co. vs. People, 143 Ill. 434 (33 N. E. 173), where a similar law is held valid.

"The evidence showed that, while the train in question ran only to Duluth, one-third of the passengers it carried were carried on through tickets to Superior, Wis., and were transferred at Duluth to another train, which connected with this one, and carried these passengers to Superior. The train being used to some extent in the business of interstate commerce, it is contended for this reason that the legislature had no right to impose this regulation on it. We do not agree with counsel for appellant. While it is not necessary to put it on so narrow a ground, we will say that this is not a regulation of interstate traffic, but most distinctively a regulation of local traffic, for the purposes of which the train was required to be stopped.

"The evidence showed that the train in question carried the United States mail, and it is contended that for this reason the regulation was void. The point is without merit.

"The judgment appealed from should be affirmed. So ordered."

State vs. Gladson, 57 Minn. 390.

It was contended by the plaintiff-in-error in the state courts that the statute of Minnesota in question is in violation of the constitution of the United States, because—

1. It is a taking of property without due process of law;
2. It is an unlawful regulation of interstate commerce and void;
3. It is an unlawful burden on the carriage of the United States mail.

The same assignments of error are now relied upon by the plaintiff-in-error.

II.

The statute in question is a reasonable exercise of police power.

A county seat is the official seat of county government. It is the place where the sessions of the district court for the county are held; where the sessions of grand juries are held; where the county officers are located and the public business of the county is transacted. It is there that county treasurers receive payment of the public taxes; that the register of deeds records deeds, mortgages, and other instruments relating to the title or conveyance of real estate; that the county auditor preserves the records of the official business of the county; that the clerk of the district court issues process and receives for filing pleadings, orders and other papers incident to litigation; that the board of county commissioners holds its sessions, and that the judge of probate administers upon the estates of minors and deceased per-

sons. This is evident from the following provisions in the statutes of Minnesota, contained in the compilation of 1894 and known as "Gen. Stat. 1894:"

"There shall be elected in each organized county a county auditor, who shall hold his office for two years from the first Monday of March next succeeding his election, and until his successor is elected and qualified, and shall keep his office at the county seat."

Gen. Stat. 1894, sec. 707.

"Each county treasurer shall keep his office at the county seat, and shall keep a fair and accurate account of all moneys by him received, showing the amount thereof, the time when, by whom, and on what account paid."

Id., sec. 726.

"In each county there shall be elected a register of deeds, whose term of office shall be two years and until his successor is elected and qualified, who shall hold his office at the county seat of the county in which he shall have been elected."

Id., sec. 760.

"The sheriff shall keep and preserve the peace in his county, for which purpose he is empowered to call to his aid such persons or power of his county as he deems necessary. He shall also pursue and apprehend all felons, execute all warrants, writs, and other process from a justice of the peace, district court, or other competent tribunal, directed to him by legal authority; shall attend upon the terms of the district court, keep his office at the county seat, and perform all the duties pertaining to his office."

Id., sec. 785.

"The judge of probate shall keep his office at the county seat, and keep a record of all orders, decrees, and other official acts made or done by him, which record shall be open to the inspection of all persons without charge."

Id., sec. 819.

"The court commissioner shall keep his office at the county seat, and keep a record of all proceedings had before him, in books procured at the expense of the county, which books shall be delivered to his successor in office."

Id., sec. 826.

"Every clerk shall keep his office at the county seat, and perform all duties which are or may be assigned him by law, and by the rules of the court of which he is clerk."

Id., sec. 857.

"The board of county commissioners shall meet at the county seat of their respective counties for the purpose of transacting

such business as may devolve upon or be brought before them, on the first Tuesday after the first Monday of January, and on the second Monday of July in each year, and may hold such extra sessions as they deem necessary for the interests of the county. Such extra sessions shall be called by a majority of the board, and the clerk shall give at least ten days' notice thereof to the commissioners; but no regular session shall continue longer than six days, and no extra session longer than three days; provided, that the limitation of the number of days of the regular or extra sessions shall not apply to Carver county."

Id., sec. 667.

The foregoing provisions afford sufficient justification for a statute requiring all passenger trains to stop at county seats. Such a place is obviously brought into close official relationship with the public at large. Public offices are visited not only by the residents of the county but by non-residents as well.

If it might properly be said that a railway train, as an instrumentality of interstate commerce, cannot be required to stop at every station, great or small, along the line on which it passes, a distinction may easily be drawn in the case of county seats with official relations established by law as in the State of Minnesota. As was said by the supreme court of Illinois in C. & A. R. R. Co. vs. The People, 105 Ill. 661:

"In the enactment of the law requiring all regular passenger trains to stop at county seats, the legislature, no doubt, had in view the great benefit the public would derive in the increased facilities for reaching the county seat, to aid in the dispatch of business in courts, in the prompt arrest and prosecution of criminals who might be indicted in the courts, in the attendance of witnesses, grand and petit jurors,—indeed, the prompt and efficient transaction of all business in the courts held at the county seat, and the facility for the examination of the records on the sale and conveyance of property. These and various other matters pertaining to the welfare of the public doubtless led to the enactment of the law, and in its enactment we are fully satisfied that the legislature transcended none of its powers, nor did it violate any chartered right of the railroad company."

III.

It will not be denied that the St. Paul & Duluth Railroad Company was organized and exists under and pursuant to the laws of Minnesota. Nor will it be contended that such company was aided by congress in its construction, with a view to its becoming

a governmental agency for the benefit of interstate commerce and the transportation of military forces and postal matter, as was the case with the Illinois Central Rd. Co. (163 U. S. 142). Furthermore, it will not be denied that the railroad station in the village of Pine City is situated upon the main line of the plaintiff-in-error, and that during the last three years all the passenger trains of that company have regularly stopped thereat.

The case at bar is thus clearly distinguished from the case of Illinois Cent. Rd. Co. vs. State of Illinois, 163 U. S. 142.

In the case just cited the station at which the fast mail trains were required to stop was located three and one-half miles from the direct interstate route; wherefore, it necessarily resulted that a compliance with the statute of Illinois would be attended with great loss of time and delay in the transportation of interstate business and the mails.

The Illinois Central Railroad Company was made distinctively a government agency. The language of the decision in the case cited is:

"The manifest purpose of congress was to establish a railroad in the center of the continent, connecting the waters of the Great Lakes with those of the Gulf of Mexico, for the benefit of interstate commerce, as well as of the military and postal departments of the government of the United States. * * * (Page 150.)

"Upon the state of facts presented by this record, the duties of the Illinois Central Railroad Company were not confined to those which it owed to the State of Illinois under the charter of the company and other laws of the state; but included distinct duties imposed upon the corporation by the constitution and laws of the United States." (Page 153.)

It was further said in the opinion just quoted from:

"The question whether a statute which merely required interstate railroad trains, without going out of their course, to stop at county seats, would be within the constitutional power of the state, is not presented, and cannot be decided, upon this record."

It is therefore manifest that the case cited, and which will be relied upon by the plaintiff-in-error does not control the one at bar.

IV.

It will not be denied that the legislature might have imposed the duty upon the plaintiff-in-error when bestowing its charter upon it, of stopping all its passenger trains at county seats. With the duty thus imposed, would there have been any force to the

contention that the statute was a taking of property without due process of law, or an interference with interstate commerce or the transportation of the mails?

V.

The courts have not assumed to define with exactness the limits of the police power. They have preferred rather to adopt a rule of inclusion or exclusion and adjudge each case by its own facts and circumstances.

"It is much easier to perceive and realize the existence and sources of this power, than to mark its boundaries or prescribe limits to its exercise."

Commonwealth vs. Alger, 7 Cush. 85.

While it undoubtedly extends to regulations aimed at protecting the lives, property, health and morals of the citizens of a state, it is not restricted to such subjects. This is the view now generally adopted by the courts of this country.

Munn vs. Illinois, 94 U. S. 113;
Railroad Co. vs. Husen, 95 U. S. 465;
Barbier vs. Connolly, 113 U. S. 27, 31;
Stone vs. Farmers L. & T. Co., 116 U. S. 307;
Mugler vs. Kansas, 123 U. S. 660-3;
Powell vs. Pennsylvania, 127 U. S. 685, 686.
Thorpe vs. The Rutland & Burlington Rd. Co., 27 Vt. 149;
State vs. New Haven & N. Co., 43 Conn. 351;
Pennsylvania Co. vs. Wentz, 37 Ohio St. 333;
C. & A. Rd. Co. vs. People, 105 Ill. 657;
Davidson vs. State, 4 Tex. App. 545;
State of Connecticut vs. N. H. & N. Co., 43 Conn. 351.

"Every statute is presumed to be constitutional. The courts ought not to declare one to be unconstitutional, unless it is clearly so. If there is doubt, the expressed will of the legislature should be sustained."

Munn vs. Illionis, 94 U. S. 123.

"The governments of the states possess all the powers of the parliament of England, except such as have been delegated to the United States or reserved by the people." (Id., p. 124.)

"From this source came the police powers, which * * * 'are nothing more or less than the powers of government inherent in every sovereignty, that is to say, the power to govern men and things.' Under these powers the government regulates the

conduct of its citizens one toward another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good." (Id., p. 125.)

"When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created." (Id., p. 126.)

"By the general police power of a state, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the state."

Railroad Co. vs. Husen, supra, p. 471.

"Neither the fourteenth amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.

"In the execution of admitted powers unnecessary proceedings are often required which are cumbersome, dilatory and expensive, yet, if no discrimination against any one be made and no substantial right be impaired by them, they are not obnoxious to any constitutional objection. The inconveniences arising in the administration of the laws from this cause are matters entirely for

the consideration of the state; they can be remedied only by the state."

Barbier vs. Connolly, supra, p. 31.

"Every person, every corporation, everything within the territorial limits of a state is while there subject to the constitutional authority of the state government. Clearly under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the state which is the lawful subject of state goverment. It may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the state, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi. So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of its road as lies within the state: to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, the convenience, or the safety of those who are entitled to look to the state for protection against the wrongful or negligent conduct of others. This company is not relieved entirely from state regulation or state control in Mississippi simply because it has been incorporated by, and is carrying on business in, the other states through which its road runs. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the constitution of the United States within the exclusive jurisdiction of congress, that is to say, using the language of this court in Caldwell vs. Bridge Co., 113 U. S. 205, 210, 'when the subjects on which it is exerted are national in their character, and admit and require uniformity of regulations affecting alike all the states.' Under this rule nothing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company or impair the usefulness of its facilities for interstate traffic. It is not enough to prevent the state from acting that the road in Mississippi is used in aid of interstate commerce. Legislation of this kind to be unconstitutional must be such as will necessarily amount to or operate as a regulation of business without the state as well as within."

Stone vs. F. L. & T. Co., supra, 334.

"Those rights are best secured, in our government, by the observance, on the part of all, of such regulations as are established by competent authority to promote the common good. No one may rightfully do that which the law-making power, upon reasonable grounds, declares to be prejudicial to the general welfare. This conclusion is unavoidable, unless the fourteenth amendment of the constitution takes from the states of the Union those powers of police that were reserved at the time the original constitution was adopted."

Mugler vs. Kansas, supra, p. 663.

"It is not a part of their functions (the courts) to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such questions. The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large."

Powell vs Pennsylvania, supra, p. 685.

Applying these principles to the case at bar, it would then seem to be manifest that the legislature has acted within its legitimate powers in requiring all regular passenger trains to stop at their stations in county seats. It must be presumed that, acting with full knowledge of the subject and after proper investigation, it sought to and did advance the "public good," the "public welfare" and the "public prosperity," by enacting the law in question.

The legislature was not unmindful of the fact that county seats are but infrequently at the termini of railroads and, like the village of Pine City, are frequently served with a single railroad.

In determining the needs of a county seat, regard must be had not only to the ordinary business transacted thereat, but to exigencies frequently arising incidental to the proper discharge of the public business and the maintenance of good government. The general welfare and prosperity of the county, as well as of the state, depend upon the prompt dispatch of the public business. Occasions arise, in the administration of justice, where, as said the supreme court of Illinois in C. & A. Rd. Co. vs. People, 105 Ill. 661, there must be dispatch "in the prompt arrest and prosecution of criminals who might be indicted in the courts, in the attendance of witness, grand and petit jurors,—indeed, the prompt and efficient transaction of all business in the courts held at the county seat, and the facility for the examination of the records on the sale and conveyance of property."

VI.

Similar legislation has been enacted in other states and received judicial consideration.

C. & A. R. R. Co. vs. People, 105 Ill. 657;
I. C. R. R. Co. vs. People, 143 Ill. 434;
I. C. R. R. Co. vs. Illinois, 163 U. S. 142;
Davidson vs. State, 4 Tex. App. 545;
State vs. N. H. & N. Co., 43 Conn. 351;
Commonwealth vs. Eastern Rd. Co., 103 Mass. 254;
People ex rel. vs. L. & N. R. R. Co., 120 Ill. 48.

The Illinois statute was considered in I. C. R. R. Co. vs. Illinois, and has already been referred to in this brief. The same statute was considered in C. & A. Rd. Co. vs. People, supra. In the one case the station was situated upon the main interstate route; in the other, as already said, it was three and one-half miles to one side of it.

The Texas statute contained the following provision:

"From and after the establishment of any wayside station, or stations, by any railroad company in this state, it shall be the duty of the conductor, or other person in charge of any train of passenger cars upon such railroad, to stop his train at each and every such station not less than five minutes."

The supreme court of Texas say in respect to its validity:

"In the case under consideration, viewed in the light of the authorities given, we are of the opinion that the legislature, under the general police power of the state, had the right to so regulate the time of stoppage at wayside stations of passenger railroad trains, and that in the enactment of the act in question they have not transcended the legitimate scope of that power."

Davidson vs. State, supra, 548.

A railroad company doing business in the State of Connecticut abandoned one of its stations with the approval of the board of railroad commissioners of the state. The legislature subsequently passed an act requiring the company to stop its trains at the abandoned station. A writ of mandamus was applied for and granted to compel compliance with the statute. When the case came under the review of the supreme court of that state, it was sustained as a legitimate exercise of legislative power.

State vs. New Haven & N. Co., 43 Conn. 351.

A statute of Massachusetts contained the following provision:

"The Eastern Railroad Company is hereby required to establish

and maintain, on the line of its railroad at Knight's Crossing, so called, in the town of Newbury, a flag station; and to erect at said place a station-house reasonably commodious for the use of passengers and the accomodation of freight, at which at least two trains each way shall stop each day, upon the proper signals being made; and said company is hereby authorized to take such land as shall be necessary for the erection of such station-house, and for approaches thereto, under the provisions of the sixty-third chapter of the General Statutes."

The railroad company resisted the attempt of the commonwealth to enforce the statute, on the ground that it was unconstitutional. The charter of the company contained a provision to the effect that it should be subject to amendment, alteration or repeal. While the decision of the court appears to have been rested largely upon such reservation, it was not wholly so, and certainly it was not necessarily so. The court say, among other things:

"But independently of the authority of those cases, it seems to us that the clause was intended to provide for such a case as the present. If the directors of a railroad were to find it for the interest of the stockholders to refuse to carry any freight or passengers except such as they might take at one end of the road and carry entirely through to the other end, and were to refuse to establish any way stations or do any way business for that reason, though the road passed for a long distance through a populous part of the state, this would be a case manifestly requiring and authorizing legislative interference under the clause in question. And on the same ground, if they refuse to provide reasonable accommodation for the people of any smaller locality, the legislature may reasonably alter and modify the discretionary power which the charter confers upon the directors, so as to make the duty to provide the accommodation absolute. Whether a reasonable ground for interference is presented in any particular case is for the legislature to determine; and their determination on this point must be conclusive."

Commonwealth vs. Eastern Rd. Co., 103 Mass. 258.

VII.

It cannot properly be urged that the statute violates the commerce clause of the federal constitution.

Granting that it may affect, it does not regulate commerce.

"Not everything which affects commerce is a regulation of it, within the meaning of the constitution."

State Tax on Railway Gross Receipts, 15 Wall. 284 (p. 293).

"It is also an established principle, as already indicated, that the only way in which commerce between the states can be legitimately affected by state laws, is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a state provides for the security of the lives, limbs, health and comfort of persons and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries, and other commercial facilities."

Robbins vs. Shelby Taxing Dist., 120 U. S. 489.

A state may prescribe a system of pilotage.

"Viewed in this light, so much of this act of 1789 as declares that pilots shall continue to be regulated 'by such laws as the states may respectively hereafter enact for that purpose,' instead of being held to be inoperative, as an attempt to confer on the states a power to legislate, of which the constitution had deprived them, is allowed an appropriate and important signification. It manifests the understanding of congress, at the outset of the government, that the nature of this subject is not such as to require its exclusive legislation. The practice of the states, and of the national government, has been in conformity with this declaration, from the origin of the national government to this time; and the nature of the subject when examined, is such as to leave no doubt of the superior fitness and propriety, not to say the absolute necessity, of different systems of regulation, drawn from local knowledge and experience, and conformed to local wants. How then can we say, that by the mere grant of power to regulate commerce, the states are deprived of all the power to legislate on this subject, because from the nature of the power the legislation of congress must be exclusive. This would be to affirm that the nature of the power is, in any case, something different from the nature of the subject to which, in such case, the power extends, and that the nature of the power necessarily demands, in all cases, exclusive legislation by congress, while the nature of one of the subjects of that power, not only does not require such exclusive legislation, but may be best provided for by many different systems enacted by the states, in conformity with the circumstances of the ports within their limits. In construing an instrument designed for the formation of a government, and in determining the extent of one of its important grants of power to legislate, we can make no such distinction between the nature of the power and the nature of the subject on which

that power was intended practically to operate, nor consider the grant more extensive by affirming of the power, what is not true of its subject now in question."

Cooley vs. Port Wardens, 12 How. 299.

A state may prescribe quarantine regulations, and may require fees to be paid for inspection.

"But aside from this, quarantine laws belong to that class of state legislation which, whether passed with intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of congress.

"The matter is one in which the rules that should govern it may in many respects be different in different localities, and for that reason be better understood and more wisely established by the local authorities. The practice which should control a quarantine station on the Mississippi river, a hundred miles from the sea, may be widely and wisely different from that which is best for the harbor of New York. In this respect the case falls within the principle which governed the cases of Wilson vs. Blackbird Creek Marsh Co., 2 Pet. 245; Cooley vs. The Board of Wardens, 12 How. 299; Gilman vs. Philadelphia, 3 Wall. 713, 727; Pound vs. Turk, 95 U. S. 459, 462; Hull vs. DeCuir, 95 U. S. 485, 488; Packet Co. vs. Catlettsburg, 105 U. S. 559, 562; Transportation Co. vs. Parkersburg, 107 U. S. 691, 702; Escanaba Co. vs. Chicago, 107 U. S. 678."

Morgan vs. Louisiana, 118 U. S. 455.

A state may provide for the improvement of harbors, bays, and rivers.

"The improvement of harbors, bays, and navigable rivers within the states falls within this last category of cases. The control of congress over them is to insure freedom in their navigation, so far as that is essential to the exercise of its commercial power. Such freedom is not encroached upon by the removal of obstructions to their navigability or by other legitimate improvement. The states have as full control over their purely internal commerce as congress has over commerce among the several states and with foreign nations; and to promote the growth of that internal commerce and insure its safety they have an undoubted right to remove obstructions from their harbors and rivers, deepen their channels and improve them generally, if they do not impair their free navigation as permitted under the laws

of the United States, or defeat any system for the improvement of their navigation provided by the general government. Legislation of the states for the purposes and within the limits mentioned do not infringe upon the commercial power of congress; and so we hold that the act of the State of Alabama of Feb. 16, 1867, to provide for the 'improvement of the river, bay and harbor of Mobile,' is not invalid."

Mobile vs. Kimball, 102 U. S. 691.

A state may establish port regulations.

"And the local authorities have a right to prescribe at what wharf a vessel may lie, and how long she may remain there, where she may unload or take on board particular cargoes, where she may anchor in the harbor, and for what time, and what description of light she shall display at night to warn the passing vessels of her position, and that she is at anchor and not under sail. They are like to the local usages of navigation in different ports, and every vessel, from whatever part of the world she may come, is bound to take notice of them and conform to them. And there is nothing in the regulations referred to in the port of Charleston which is in conflict with any law of congress regulating commerce, or with the general admiralty jurisdiction conferred on the courts of the United States."

Owners of Brig vs. Owners of Ship, 21 How. 184.

Or provide for the erection of wharves and collection of wharfage.

"There remains to be considered the validity of the ordinance which forbids the landing of vessels, except by the permission of the wharfmaster, at any other point within the town than between Division and Main streets, and the question of excessive charges for the use of the wharf.

"There can be no doubt that the rules which govern the landing and departure of vessels at points situated on navigable waters may seriously affect them in their business of navigation and transportation, and in some sense such rules are regulations of commerce."

Packet Co. vs. Catlettsburg, 105 U. S. 559;
Ouachita P. Co. vs. Aiken, 121 U. S. 444.

A state can impose reasonable restrictions upon the mode in which any business is carried on, whether interstate commerce be involved or not, provided only that it be not hampered thereby.

Harrigan vs. Conn. River L. Co., 129 Mass. 580.

It may make all needful regulations of a police character for the government of a railroad company while operating its road in its jurisdiction.

Stone vs. Farmers' L. & T. Co., 116 U. S. 307.

It may require engineers to pass a color examination.

Smith vs. Alabama, 124 U. S. 465.

Perhaps the law is nowhere more plainly stated than as follows:

"But whatever may be the nature and reach of the police power of a state, it cannot be exercised over a subject confided exclusively to congress by the federal constitution. It cannot invade the domain of the national government. It was said in Henderson et al. vs. Mayor of the City of New York et al., supra, to 'be clear, from the nature of our complex form of government, that whenever the statute of a state invades the domain of legislation which belongs exclusively to the congress of the United States, it is void, no matter under what class of powers it may fall, or how closely allied it may be to powers conceded to belong to the states.' Substantially the same thing was said by Chief Justice Marshall in Gibbons vs. Ogden, 9 Wheat. 1. Neither the unlimited powers of a state to tax, nor any of its large police powers, can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon congress by the constitution.' Many acts of a state may, indeed, affect commerce, without amounting to a regulation of it, in the constitutional sense of the term. And it is sometimes difficult to define the distinction between that which merely affects or influences and that which regulates or furnishes a rule for conduct."

Railroad Co. vs. Husen, supra.

After all, the question resolves itself to this: Is it an unreasonable requirement that all regular passenger trains shall stop at established stations in county seats? Does such a regulation so burden or impede interstate commerce as to amount to a violation of the federal constitution? If we look at the practical effects of the law as applied to any particular road in Minnesota the question must certainly be answered in the negative. To instance the case of the plaintiff-in-error, the only county seat at which all of its trains did not stop at the time of the passage of the statute in question was the village of Pine City. This would mean a delay on account of the stoppage of not to exceed one to three minutes going or coming.

VIII.

The delay incident to the stoppage of a train at a county seat is not of so grave or serious a character as to affect the validity of the statute.

"It may well be, as held by the courts of Illinois, that the arrangements made by the company with the postoffice department of the United States cannot have the effect of abrogating a reasonable police regulation of the state. But a statute of the state which unnecessarily interferes with the speedy and uninterrupted carriage of the mails of the United States, cannot be considered as a reasonable police regulation."

I. C. Rd. Co. vs. Illinois, 163 U. S. 154.

The State of Illinois had been the beneficiary of a grant of lands from the United States to aid in the construction of the railroad involved in the case last cited, and the granting act contained a clause providing in effect for the transportation of the government mail and of any property or troops of the United States. Speaking of such provision the supreme court of Illinois say:

"But we apprehend, that such arrangement as the appellant company may have with the postoffice department of the federal government for the transportation of the mail, cannot have the effect of abrogating a reasonable police regulation of this state. Sections 1 and 2 of the above named act of congress grant land and right of way to the State of Illinois for the construction of a railroad 'to a point at or near the junction of the Ohio and Mississippi rivers,' and provide that the construction of said road shall be commenced at its southern terminus at or near the junction of' said rivers. Congress left it to the state, or to a company to be chartered by the state, to select the particular point, at or near such junction, which was to be the southern terminus. A subsequent contract with the postoffice department would not authorize the appellant to abandon the use of any part of the road thus constructed to a point selected in pursuance of a discretion conferred by the federal congress. It was held by the supreme court of the United States, in Stone vs. Farmers' Loan & Trust Co., supra, that, in case of a railroad whose construction had been aided by congress so as to establish a route of travel through several states, a state has the power to make all needful regulations of a police character for the government of the company operating the road within the jurisdiction of the state; and that among such regulations are those which require the company to stop trains at railroad crossings, to slacken speed through

a crowded thoroughfare, and to do other things 'affecting the comfort, the convenience, or the safety of those * * * entitled to look to the state for protection,' etc. In Smith vs. Alabama, supra, the same court said that 'the rate of speed at stations and through villages, towns and cities' was a matter of state regulation. If the requirement, that the mail train go to Cairo and stop long enough to receive and let off passengers with safety, interferes in any way with the carriage of the mail, it must be by reason of the delay supposed to be thereby created. But the amount and extent of the delay must be left to the state authorities to determine, subject to the qualifications that such delay is not unreasonable. Requiring trains to stop at crossings and to slacken their speed through cities and villages creates delay. It does not appear that stopping at the Cairo station will create any unreasonable delay. On the contrary, the proof shows that a vestibule passenger train running from Chicago to New Orleans, which stops at the Cairo station, performs the journey from Chicago to New Orleans within the same time as such journey is made by the 'fast mail train.'"

I. C. R. R. Co. vs. The People, 143 Ill. 455.

Respectfully submitted,

H. W. CHILDS and
GEO. B. EDGERTON,
Attorneys for Defendant-in-Error.

166-432

166-432

Supreme Court of the United States.

OCTOBER TERM, 1896.

EX-PARTE,

PHILLIP HIEN, Petitioner.

---

1. Motion for Rule to Show Cause.
2. Petition for Writ of Mandamus.
3. Exhibits.
4. Brief.

W. H. SINGLETON,

Attorney for Petitioner.

BYRON S. ADAMS, PRINTER.

a crowded thoroughfare, and to do other things 'affecting the comfort, the convenience, or the safety of those * * * entitled to look to the state for protection,' etc. In Smith vs. Alabama, supra, the same court said that 'the rate of speed at stations and through villages, towns and cities' was a matter of state regulation. If the requirement, that the mail train go to Cairo and stop long enough to receive and let off passengers with safety, interferes in any way with the carriage of the mail, it must be by reason of the delay supposed to be thereby created. But the amount and extent of the delay must be left to the state authorities to determine, subject to the qualifications that such delay is not unreasonable. Requiring trains to stop at crossings and to slacken their speed through cities and villages creates delay. It does not appear that stopping at the Cairo station will create any unreasonable delay. On the contrary, the proof shows that a vestibule passenger train running from Chicago to New Orleans, which stops at the Cairo station, performs the journey from Chicago to New Orleans within the same time as such journey is made by the 'fast mail train.'"

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166-432

166-432

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W. H. SINGLETON,

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BYRON S. ADAMS, PRINTER.

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1896.

Ex Parte PHILLIP H. HIEN, Petitioner.

Motion on Petition for Writ of Mandamus.

And now, to wit, this 25th day of January 1897, comes the above named petitioner by his counsel and moves this Honorable Court for a rule to be issued to the Honorable the Justices of the Court of Appeals of the District of Columbia, requiring them on a day to be named in said rule to show cause before this Honorable Court why a writ of mandamus should not be issued pursuant to the Statute in such case made and provided, commanding them according to the prayer of the petition filed in this Honorable Court, the reasons for such petition being therein fully set forth and to which reference is made in support of this motion.

By his attorney

W. H. SINGLETON.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term 1896.

Ex Parte PHILLIP HIEN, Petitioner.

Petition for Writ of Mandamus.

To the Honorable, The Justices of the Supreme Court of the United States:

Your petitioner, Phillip Hien, respectfully shows:

First: That he is the original, first and sole inventor of a certain improvement in Brake Beams, fully described in an application for Letters Patent filed by him in the United States Patent Office April 2, 1892, Serial No. 427,485, as more fully appears from certified copies of the file wrapper and contents, and drawings connected with such application hereto annexed and marked Exhibit A. A'.

Second: That said improvements invented by your petitioner were not known or used by others prior to his invention thereof, not patented or described in any printed publication in this or in any foreign country before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, and not abandoned.

Third: That your petitioner has fully and in all respects complied with all the requisitions of the law in behalf of said application, and has complied fully and in all respects with all requisitions of the law for obtaining and securing the grant of Letters Patent of the United States to him for said improvement, except the payment of the final Government fee of $20.00, which your petitioner stands ready to pay.

Fourth: Your petitioner further shows that subsequent to the filing of his said application such proceedings were had in the United States Patent Office that upon September 30, 1892, an interference was declared by the Commissioner of Patents between your petitioner's said application filed April 2, 1892, Serial No. 427,485, and the patent to William A. Pungs, January 12, 1892, No. 466,834, for Brake Beams as more fully appears from a copy of the declaration of interference contained in Exhibit A, and copy of the said patent to William A. Pungs attached hereto and marked Exhibit B.

Fifth: Your petitioner further shows that testimony was duly taken by your petitioner and said William A. Pungs in said interference, and such other proceedings were had that a decision was rendered in such interference by the Commissioner of Patents on or about June 9, 1894, awarding priority of invention to the said William A. Pungs, and refusing a patent to your petitioner on the ground that your petitioner was not the first inventor of the subject matter of the interference but that the said William A. Pungs was, as more fully appears from a certified copy of said decision hereto attached, marked Exhibit C.

Sixth: Your petitioner further shows that upon June 2, 1896, your petitioner filed an appeal from the said decision of the Commissioner of Patents to the Court of Appeals of the District of Columbia according to and in compliance with all the provisions of the Statutes in such cases made and provided, as more fully appears from a certified copy of the appeal hereto attached, marked Exhibit D.

Seventh: Your petitioner further shows that upon November 7, 1896, the Commissioner of Patents made a motion before the Court of Appeals of the District of Columbia to dismiss the said appeal of your petitioner, as more fully appears from a certified copy of said motion hereto attached, and marked Exhibit E.

Eighth: Your petitioner further shows thereupon and upon December 1, 1896, said Court of Appeals of the District of Columbia dismissed your petitioner's appeal upon the sole ground that such an appeal had not been filed within the limit of time set by the rules of the Court for appeals from the decision of the Commissioner of Patents, the time limited by such rules being less than that limited by the Statute, as more fully appears by a certified copy of the decision of said Court of Appeals of the District of Columbia, hereto attached and marked Exhibit F.

Ninth: Thereupon, your petitioner upon December 12, 1896, filed a petition for the reinstatement of his appeal from the Commissioner of Patents to the Court of Appeals of the District of Columbia, upon the ground that said Court had no statutory authority to make a rule for the time of the entry of appeals from the Commissioner of Patents of a shorter limit than that provided by Statute, to wit, two years, as duly appears by a certified copy of such petition hereto attached and marked Exhibit G.

Tenth: Whereupon, the said Court of Appeals on January 4, 1897, dismissed the said petition for reinstatement, and held that the said Court of Appeals of the District of Columbia had statutory authority for making a limit of appeal of less than two years from the decision of the Commissioner of Patents, and refusing to take jurisdiction of the case, dismissed your petitioner's appeal from the decision of the Commissioner of Patents on the sole ground that such appeal was not taken within time, as more fully appears by a certified copy of the decision of said Court of Appeals of the District of Columbia, hereto attached and marked Exhibit H.

Eleventh: And your petitioner shows that he is advised and believes that he is entitled, under the laws of the United States, to have the decision of the Commissioner of Patents,

made June 9, 1894, revised by the Court of Appeals of the District of Columbia; that your petitioner's appeal to such Court was taken within the time provided by the Statutes of the United States.

Wherefore, your petitioner respectfully prays this honorable Court to issue its writ of mandamus in favor of your petitioner, to be directed to the said Court of Appeals of the District of Columbia, commanding them:

First: To vacate and set aside their decisions of December 1, 1896, and January 4, 1897.

Second: To entertain the appeal of your petitioner from the decision of the Commissioner of Patents and hear and determine the same.

PHILLIP HIEN.

by his attorney

W. H. SINGLETON.

DISTRICT OF COLUMBIA S. S.

Personally appeared W. H. Singleton of Washington, D, C., who being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof, and the same is true according to the best of his knowledge and belief.

That he has been the solicitor and of counsel of the said Phillip Hien from the time of the filing of the latter's application for United States patent up to the filing of the above petition; that he has conducted and managed all matters relating to such application for patent, and is fully conversant with all matters relating thereto.

W. H. SINGLETON.

Sworn to and subscribed before me this 16th day of January 1897.

SAMUEL A. DRURY
Notary Public.

[SEAL:]
Samuel A. Drury, Notary Public
District of Columbia.

EXHIBITS.

Exhibit A.

S. E. T.

2—175.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify That the annexed is a true copy from the Records of this office of the File Wrapper and Contents, in the matter of the Application of Phillip Hien, Filed April 2. 1892, Serial Number 427,485 for Improvement in Brake Beams.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-seven and of the Independence of the United States of America the one hundred and twenty-first.

[SEAL:] Patent Office United States of America

S. T. FISHER,
Acting Commissioner of Patents.

0—2

P. Hien

Amount received $15. Chief Clerk.

PETITION.

To the Commissioner of Patents:

Your petitioner Phillip Hien citizen of the United States, residing at Chicago, in the County of Cook, State of Illinois, prays that Letters Patent may be granted to him for improvements in Brake Beams as set forth in the annexed specification.

And he hereby appoint W. H. Singleton of Washington D. C. my Attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign the drawings, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at Chicago, in the County of Cook, and State of Illinois, this 15th day of March, 1892.

PHILLIP HIEN

SPECIFICATION.

To all whom it may concern:

Be it Known, That I, Phillip Hien citizen of the United States, residing at Chicago, in the County of Cook, and State of Illinois, have invented certain new and useful improvement in Brake Beams and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains, to make and use the same.

Figure 1 is a top view of a brake-beam provided with the invention, one end being partly in section.

Figure 2 is an enlarged end view.

Figure 3 is a section on line x-x, figure 5.

Figure 4 is the attaching-block.

Figures 5 and 6 are side and sectional views of this block.

Figure 7 is a modified way of connecting the truss-rod to the beam.

Figure 8 shows still another way.

Figure 9 is an end view of figure 8.

The present invention relates to railway car brake-beams, more especially to the kind shown in United States patent No. 361,009, granted to me April 12, 1887. In applying the invention therein contained to railway cars some difficulties have been encountered which have led to one feature of the present invention. As is well known, railway appliances are made to a "standard" for reasons of obvious utility. Prior to the invention contained in the above patent the car brake-beams were rectangular in cross section generally and the brake heads were made so as to be adapted to such a shaped beam.

Brake heads so constructed could not be applied to a tubular or round brake-beam. The inability to use the old standard brake head with the tubular beam and the desire to adapt them to each other led to the invention of the first feature of the present invention, which consists in a cup-shaped supplemental attaching-block having on the outside a configuration adapted to the old style of brake head, and on the inside adapted to the end of the brake-beam. The adoption of this attaching-block rendered a change in the construction of the truss-rod necessary. As will be hereafter explained, the old "standard" brake head and the attaching-block are secured to the beam by a bolt passing through the beam on a minor axis. Hence the truss-rod could not pass obliquely through the beam as indicated in the patent referred to. To use the trussed feature with this attaching-block there was devised

the second feature of the invention, which consists in a truss-rod which straddles the ends of the beam, and this is obtained either by a single rod having forked ends or by two rods, as may be desired.

Another feature of the invention consists in a novel form of strut as will be hereinafter pointed out.

In the annexed drawings:

The letter A indicates a hollow brake-beam made round in cross section as shown. This beam has the truss-rod and strut which gives it the "camber" shown in the drawing, and the function of which is fully explained in another application, filed April 10, 1888, Serial Number 270,188. Only such reference to such features will be made herein as is necessary to a clear understanding of the present invention.

The letter B indicates an ordinary brake having the head, B′, with the rearwardly extending lips, *b b′*, between which is the angular recess, b^2, into which the ordinary brake-beam is intended to fit.

One part of my invention is to adapt such a brake head to the tubular brake-beam, and this is done by the use of the or fitting "attaching-block," C, shown in figures 3, 4, 5 and 6. or fitting This block, C, is a box-like structure made cup-shaped or like a cap to fit on the end, *a*, of the beam. At its ends it has a hollow bearing, *c c′*, which fits snugly the end of the beam, and between these bearings it is made hollow for lightness. At the outer end it is closed and has the oblique bearing, c^2. At the rear it has a hole, c^3, and at the front a hole, c^4. On the top and bottom there is a slot, c^5, which extends from the inner end, c^6, nearly to the outer end, c^7, of the block. On the top and bottom there is also a swell, c^9, which extends obliquely from the rear of the outer end to

the front of the inner end of the block. This swell is hollow and forms an oblique bore, c^{10}, through the block. The top, c^{11}, and bottom, c^{12}, of the block are straight. In regard to the relative size of the brake head and this attaching-block, the latter is to be made of such a size that it will fit snugly into the recess, b^2, as shown in figure 2.

The ends, *a*, of the brake-beam, A, are provided with the aligned holes, *a a'*, their position being such that they register with the holes, *c c*, on the attaching block when the latter is in the beam.

To use this part of the invention the attaching-block, C, is put on the end of the beam, A, the holes, a' a' c^3 c^4, registering. By making the block with the slots, c^5, it can be easily slipped over the ends of the beam, and when in place it is clamped tight. The brake head, B', is slipped over the attaching-block, C, and a bolt, D, is passed through the holes, a' a' c^3 c^4, and is nutted, thus holding the brake head to the block. The brake-shoe is then attached to the head and they are all secured together as shown in figure 2. In thus securing the ordinary brake by the attaching-block to the tubular brake-beam, it will be seen that the fastening bolt, D, passes through the beam, A, at the end. This, of course, prevents the truss-rod from passing through the beam at the ends as shown in my patent and application already referred to. This causes a re-arrangement of the truss-rod. It necessitates that it should pass on the outside of the brake-beam. The swells, c^9, with their oblique bores, c^{10}, are to receive the ends of the truss-rod or truss-rods.

In figures 1 and 2 is shown one form of this part of my invention. The strut, E, is made with two bearings, *e e*, and two truss-rods, F F, are used, one passing above and

one beneath the ends of the beam. The ends, *f f*, of these truss-rods, F F, pass through the oblique bores, c^{10}, and receive the nuts, *f' f'*, which bear against the oblique bearings, c^2.

Instead of using two truss-rods, but one main rod, G (figure 7), may be used and be swiveled as at *g* to a fork, G, the arms, *g' g'*, of which pass around the brake-beam and through the bores, $c^{10}c^{10}$.

Or the form shown in figures 8 and 9 may be used. Here the attaching blocks, instead of having the oblique bores, have oblique grooves, *h h*, at top and bottom, and the end groove, *h'*, on the outside. In this instance one truss-rod, H, is used. This rod has one end, h^2, bent around one attaching-block and secured. The other end, h^3, is also thus secured, but it is provided with a turn-buckle, h^4, by which the necessary tightening can be made.

With these devices I propose to us a novel form of strut. The strut, E, has the collar bearing, *e'*, for the brake-beam and the bearing for the truss-rod. Between the truss-rod and the brake-beam the strut is made with an oblique slot, e^2, for the brake lever which is held therein by a bolt passing through the holes, e^3.

Having thus described my invention, what I claim is:

First. A metallic brake-beam, having its ends provided with the fitting made with a portion for embracing the beam and a portion for receiving the ordinary brake head, substantially as described.

Second. A railway car brake-beam, and a brake head adapted to fit a different style of brake-beam, in combination with a supplemental attaching-block between the beam and the head, said block fitting the beam on the inside and the head on the outside, whereby a brake head of a given pattern may be fitted to a brake-beam of another pattern, as set forth.

Third. The combination with a brake head and a brake-beam, of an interposed seat block or supplemental attaching-block having a central beam orifice, which corresponds with the cross section of the brake-beam, and a rectangular contour adapted to receive the common beam seat of a brake head, as set forth.

Fourth. The supplemental attaching-block, C, having the slots, c^5, as set forth.

Fifth. The combination of the brake-beam and the supplemental attaching-block with the strut and the truss-rod, the ends of the latter passing at top and bottom of the beam, as set forth.

Sixth. The combination of the brake-beam, the supplemental attaching blocks having the oblique bores with the strut having the bearings for the truss-rods, and the truss-rods resting in such bearings and passing at top and bottom of the beam and through the oblique bores, as set forth.

In testimony whereof I affix my signature, in presence of two witnesses.

PHILLIP HIEN

E. B. LEIGH
H. C. BUHOUP

OATH.

STATE OF ILLINOIS } ss:
County of Cook }

Phillip Hien the above-named petitioner, citizen of the United States and resident of Chicago, in the County of Cook, and State of Illinois, being duly sworn, deposes and says that he verily believes himself to be the original, first, and sole inventor of the improvement in Brake-Beams described in the foregoing specification; that the same has not been patented to him nor to others, with his knowledge

or consent, in any country that the same has not to his knowledge been in public use or on sale in the United States for more than two years prior to this application, and he does not know and does not believe that the same was ever known or used prior to his invention thereof.

PHILLIP HIEN

Sworn to and subscribed before me, this 15th day of March, 1892.

M. L. ALLEN
Notary Public.

[Notarial Seal.]

[Endorsed:] Serial No. 427485. Paper No. ½ Application Filed 427,485, 1892. P. Hien. U. S. Patent Office. Apr 2 1892 Chief Clerk.

Room 85. DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OEFICE,

WASHINGTON, D. C., *June 9, 1892.*

Mailed " *10* "

PHILLIP HIEN,
Care W. H. Singleton,
City.

Brake Beams.
Filed April 2d '92. #427,485.

The 1st claim is rejected as indefinite. The "fitting" may be anything; any portion of it may be made to fit any portion of the brake beam, and any portion of the brake-head.

The combination set out in the 5th and 6th claims, is found substantially in

Westinghouse, #149902, April 21" '74, Brake Shoes.

The relation of the elements to each other is not affected by

the fact that one is a "supplemental attaching block",—as set out in the claims noted.

The 5th and 6th claims are rejected on the above named reference.

E. O. F. SANDERS, *Exr.*

[Endorsed:] P. Hien—Serial No. 427,485 Paper No. 1 Rej.—Dated June 9, 1892.

Room 85, June 20 1892.
Sanders, P. Hien,
April 2, 1892, Brake Beams,
No. 427,485.
Commissioner of Patents,
Sir:

In this case:

In the description the word "fitting" is used as the equivalent of "the attaching block", which, therefore, seems to render the term "fitting" definite.

As to claims 5 and 6, the Westinghouse patent does not show the supplemental attaching block, which is sufficient to confer patentability upon these claims; nor does this patent show the "oblique bores" an element of claim 6.

Further action is requested.

Res: Etc:
P. HIEN,
per W. H. SINGLETON,
Atty.

[Endorsed:] Serial No. 427485 Paper No. 2 Letter Filed June 20, 1892. P. Hien. U. S. Patent Office. Jun 20 1892. Division X.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

WASHINGTON, D. C., *July 5, 1892.*
Mailed " *6* "

Brake Beams.

PHILLIP HIEN,
c/o W. H. Singleton,
Washington, D. C.

Filed April 2, 1892. Serial Number 427,485.

Claims 1 and 2 are rejected on reference to patent of Pungs, Jan. 12, 1892., # 466,834.

SANDERS, *Exr.*

[Endorsed:] P. Hien—Serial No. 427,485 Paper No. 3, 2d Rej—Dated July 5 1892.

COUNTY OF COOK, } ss
State of Illinois }

Personally appeared Phillip Hien, of Chicago, who, being duly sworn, deposes and says:

That he is the applicant mentioned in application for United States patent for improvement in Brake Beams, filed April 2, 1892, No. 427,485.

That he made the invention shown, described and claimed in said application prior to February 18, 1891.

That prior to February 18, 1891 the invention contained in said application was reduced to practice and a full sized device containing such invention was made prior to said date.

PHILLIP HIEN

Swon to & suscribe in my presence this Twelfth day of August A D 1892

JAMES E TRISTRAM

(Notarial Seal)

Notary Public
Cook Co
Ills

U S. PATENT OFFICE

In Re
PHILLIP HIEN
Serial #427,485
Filed April 2 /92

Brake Beams
Room 85–

Hon W. E. SIMONDS
Comm'r of Patents

SIR:

Applicant herewith files an affidavit under Rule 94 Section 2, and requests an interference be declared between his application and the Patent of W, A, Pungs #466834 Jany 12 /92– filed Feby 18– 1891, on which this application has been rejected.

Very Respy

W H SINGLETON
atty for Hien

Washington D. C.
Aug 25 /92.

[Endorsed:] P. Hien Serial No. 427,485 Paper No. 4 Affidavit Filed Aug. 25 1892 Room 85 U. S. Patent Office Aug 25 1892 Division X.

2-061.
—

Interference.
U. S. Patent Office
Sep 30 1892
Exr of Interferences

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

WASHINGTON, D. C., *Sep. 23, 1892.*

PHILLIP HIEN,
c/o W. H. Singleton,
Washington, D. C.

Interference No. 15,830.

Please find below a copy of a communication from the

Examiner concerning your application for Letters Patent for Brake Beams, filed April 2, 1892, Ser. No. 427,485.

Very respectfully,

W. E. SIMONDS
Commissioner of Patents.

Room No. 85.
All communications should be addressed to
"The Commissioner of Patents, 0-2
Washington, D. C."

Your case, above referred to, is adjudged to interfere with others, hereafter specified, and the question of priority will be determined in conformity with the Rules.

The statement demanded by Rule 110 must be sealed up and filed on or before the 2nd day of November, 1892, with the subject of the invention, and name of party filing it, indorsed on the envelope. The interference number should also be indorsed thereon. The subject-matter involved in the interference is

Issue.

A metallic Brake Beam having its ends provided with a fitting made with a portion for embracing the beam and a portion for receiving the ordinary brake head.

The issue is contained in Hien's claims 1 and 2 and Pungs' claim 2.

The other party to the interference in William A. Pungs of Detroit, Mich., for Metallic Brake Beam Face Plate, patented Jan. 12, 1892, Patent No. 466,834, whose Attorney is Parker & Burton, Detroit, Mich.

H. P. SANDERS *Exr.*

[Endorsed:] P. Hien—Serial No. 427,485 Paper No. 5 Pre. Int. Dated Sep. 23, 1892.

2-384.

Serial No..... Paper No.....

APPEAL.

Name,.....
Filed ....., 189...
Title, ...

To EXAMINERS-IN-CHIEF.

Reasons for appeal, ...
Examiner's statement, ...
Notice of hearing, ...
Brief, ...
Decision, ...
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Notice of decision, ...

To COMMISSIONER.

Received, ...
Brief, ...
Notice of hearing, ...
Decision, ...
.....
... .
.....
.....
Notice of decision, ...

10849 b—5 m

[Endorsed:] Serial No. 427,485 Paper No. 6 Intf. Data. Dated June 13 1894 No. 15,830. Hien v. Pungs. Adverse to applicant July 21, 1893, by the Exr. of Intf. Exr. of Intf. affirmed by the Board on appeal Aug. 19, 1893 Board affirmed by the Com'r on appeal June 9, 1894

All communications should be addressed to (2—086.)
"The Commissioner of Patents,
Washington, D. C."

E. P. H.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

WASHINGTON, D. C., *June 13, 1894.*
Mailed " " "

PHILLIP HIEN,
Care W. H. Singleton,
City.

Subject:
Brake Beams.
Filed April 2, 1892. No. 427,485.

Please find below a communication from the Examiner in charge of the application above noted.

JOHN S. SEYMOUR,
Commissioner of Patents.

Room No. 98.

In accordance with provisions of Rule 32, applicant's claims 1 and 2, stand finally rejected.

G. R. SIMPSON,
Act'g Examiner
Div. 34.

[Endorsed:] Serial No. 427,485 Paper No. 7 Rejection, Dated June 13, 1894. Phillip Hein.

OATH.

STATE OF ILLINOIS,
County of Cook. } *ss.*

Phillip Hien, a citizen of the United States, and resident of Chicago, in the County of Cook and State of Illinois, being duly sworn, deposes and says that he verily believes himself to be the original, first, and sole inventor of the

improvement in Brake Beams described and claimed in the application for United States patent, filed April 2, 1892, N° 427,485; that the same has not been patented to him, or to others with his knowledge or consent in any country that this invention is the same for which he made application for United States patent, November 28, 1888; N° 292,046, that the same has not to his knowledge been in public use or on sale in the United States for more than two years prior to the filing of the application, dated April 2, 1892, and he does not know and does not believe that the same was ever known or used prior to his invention thereof.

PHILLIP HIEN.

Sworn to and subscribed before me this 14th day of June, 1894.

CHAS. H. BINNEY
Notary Public.

(Notarial Seal)

Phillip Hien — June 18, 1894,
April 2, 1892, — Brake Beam, No. 427,485.

Commissioner of Patents,

SIR:

Please find herewith an affidavit which is filed in the above entitled case not as being regarded as essential, but simply through an "abundance of caution."

Res: etc:

PHILLIP HIEN,
per W. H. SINGLETON, *Atty.*

[Endorsed:] Serial No. 427,485, Paper No. 8, Sup. Oath, Filed June— 18— 1894. P Hein. U. S. Patent Office Jun 18 1894 Division XXXIV.

Div. 34.
(Serial Number,)
427485 1892.

Sanders
(Ex'r's Book,)
214 63
46 919

Patent No. ———

Div. 34

Phillip Hien
Of Chicago
County of
State of Illinois
Invention Brake Beams

Parts of application filed.

Petition April 2, 1892.
Affidavit " " "
Specification " " "
Drawing 2 shts, " " "
Model
Specimen
First fee Cash ~~$15~~, April 2/92
" " ~~Cert.~~

2 App. filed complete Apl 2–92
Examined
Countersigned :

For Commissioner.

3 Notice of allowance , 189 .
Final fee Cash , 189 .
" " Cert. , 189 .
Patented , 189 .
3 W H Singleton,
City.

Brake Shoes Ex.
1892. F.

Contents:

½. Application 1 papers. O. K.
1. Rejection—June 9" 92.
2. Letter June 20, '92.
3. 2d Rejection—July 5, 92
4. Affidavit Aug. 25, 92.
5. Pre. Int. Sept. 23, 1892.
6. Intf. Data June 13, 1894
7. Final Rejection " 13, "
8. New Oath June 18, '94
9. Not up for action
10.
11.
12.
13.
14.
15. 105. RAILWAY CARS,
16. Brake Shoes.
17.
18.
19.
20.
21.
22.
23.

TITLE:

Improvement in

[Endorsed:] U. S. Patent Office, Copy made Jan 9 1897 4207/97

Fig. 1.

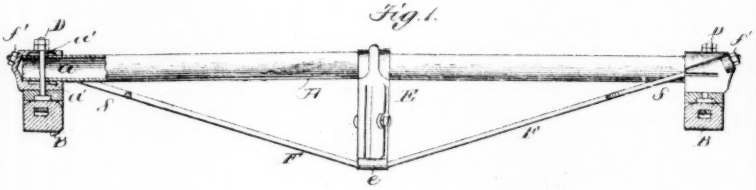


Fig. 2

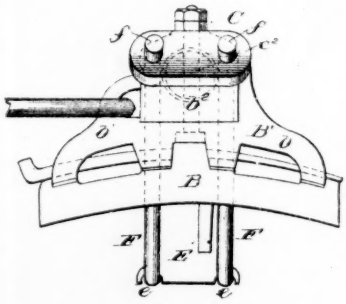


Fig. 3

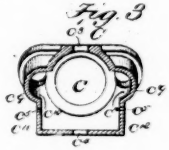


Fig. 4

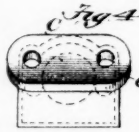


Fig. 5

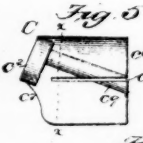
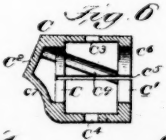
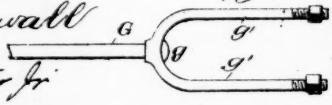


Fig. 6



Witnesses
F. P. Cornwall
F. W. Ritter Jr.

Fig. 7



Inventor
Phillip Hiers
per W. H. Singleton.
atty.

Fig 8.

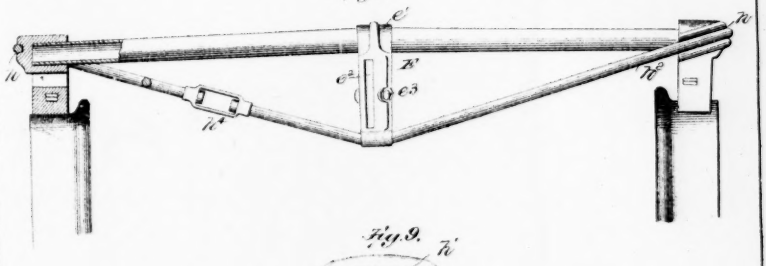
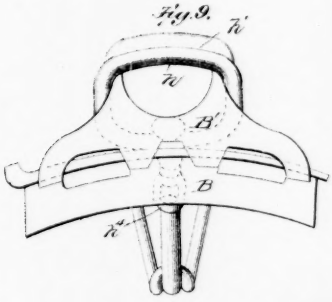


Fig 9.



Witnesses:
F. H. Connell
F. W. Ritter Jr

Inventor:
Philip Hiew.
per W. H. Singleton.
Atty.

Exhibit A'

S. E. T.

2-175.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this office of the Drawings, as originally filed in the matter of the Application of Phillip Hien, Filed April 2, 1892, Serial Number 427,485 for Improvement in Brake Beams.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 16th day of January, in the year of our Lord one thousand eight hundred and ninety-seven and of the Independence of the United States of America the one hundred and twenty-first.

[SEAL:]
Patent Office United States of America

JOHN S. SEYMOUR
Commissioner of Patents.

0-2

Exhibit B.

M H.

2-175.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting :

This is to certify that the annexed is a true copy from the Records of this office of the Letters Patent granted William A. Pungs, January 12, 1892, Number 466,834, for Improvement in Metallic Brake-Beams.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 12th day of January, in the year of our Lord one thousand eight hundred and ninety-seven and of the Independence of the United States of America the one hundred and twenty-first.

[SEAL:] Patent Office United States of America

JOHN S. SEYMOUR
Commissioner of Patents.

0-2

2-155.

No. 466,834

THE UNITED STATES OF AMERICA.

To all to whom these Presents shall come :

Whereas, William A. Pungs, of Detroit, Michigan, has presented to the Commissioner of Patents a petition praying

(No Model.)

W. A. PUNGS.

METALLIC BRAKE BEAM.

No. 466,834. Patented Jan. 12, 1892.

Fig. 1.

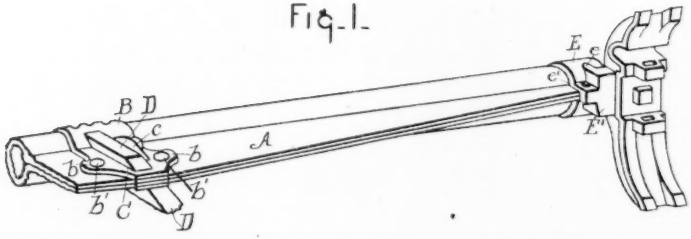


Fig. 2

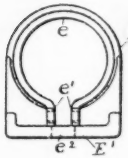


Fig. 3.

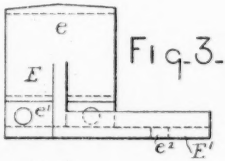


Fig. 4.

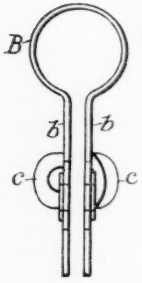
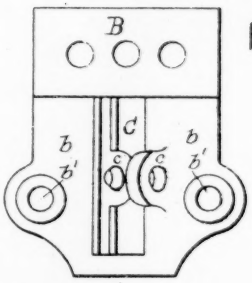


Fig. 5.



WITNESSES

F. Clough.

M. A. Rives.

INVENTOR

William A. Pungs.

By Wells W. Leggett.

Attorneys.

THE BORNE PETERS CO., PHOTO-LITHO., WASHINGTON, D. C.

UNITED STATES PATENT OFFICE.

WILLIAM A. PUNGS, OF DETROIT, MICHIGAN.

METALLIC BRAKE-BEAM.

SPECIFICATION forming part of Letters Patent No. 466,834, dated January 12, 1892.

Application filed February 18, 1891. Serial No. 381,896. (No model.)

To all whom it may concern:

Be it known that I, WILLIAM A. PUNGS, a citizen of the United States, residing at Detroit, county of Wayne, and State of Michigan, have invented a certain new and useful Improvement in Metallic Brake-Beams; and I declare the following to be a full, clear, and exact description of the same, such as will enable others skilled in the art to which it pertains to make and use the same, reference being had to the accompanying drawings, which form a part of this specification.

It is the object of my invention to improve on a brake-beam heretofore patented by me, the several improvements being as follows: In my former beam the brake-lever was attached to the beam by a forked piece extending out from the middle of the beam; but the difficulty with that was that the weight of the lever being thrown so far from the center of the beam tilted the same and made it difficult to balance the beam properly.

One of the objects of the present invention is to throw the lever nearer back to the center of the beam, so that it will be more evenly balanced.

Another feature is to provide a fitting on the end of the beam, whereby the ordinary brake-heads, such as are now used on the wooden beams, may be applied to my metallic beam.

In the drawings, Figure 1 is a perspective view of my beam. Figs. 2, 3, 4, and 5 are details of the fitting at the middle of the beam and the fitting at the end of the beam, respectively.

In carrying out the invention, A represents the beam proper. This may be of any suitable form or construction; but I prefer to make it, as shown in my former patent, of a single piece of metal bent at its middle into a cylindrical form and having the meeting edges extended somewhat and lying face to face against each other, as illustrated in Fig. 1. At the middle of the beam I provide the fitting B. This is shaped so that it will surround and closely fit the circular portion of the beam, and has extended flanges *b*, which may be attached to the extended edges of the beam proper, suitable orifices *b'* being provided for that purpose. Extending through these flanges *b* is what may be termed a "diagonal slot" C, through which the brake-lever D is passed, the fastening-bolt being engaged in lugs *c*. It will thus be seen that by providing this fitting at the middle of the beam the lever can be brought nearer to the center, while at the same time the fitting B compensates for any reduction in the strength caused by perforating the flanges of the beam to permit the brake-lever to be passed through.

E is the fitting on the end of the beam, made with a circular portion *e* to encircle the circular portion of the beam, and with extended flanges *e'* to embrace the flanges of the beam, and provided, also, with the laterally-extending portion E'. This portion E' is the size and shape of the end of the ordinary wood beam, and is provided with a bolt-orifice e^2, so that the brake-head, such as is used on the wooden beam, can be readily bolted to this flange E', thus obviating the necessity of a separate and distinct style of brake-head for the metallic beam.

What I claim is—

1. A metallic brake-beam having the brake-lever passed through the beam at an oblique angle and secured by a bolt passed through lugs on the beam, substantially as described.

2. A metallic brake-beam having its ends provided with the fitting E, made with a portion for embracing the beam and a portion E' for receiving the ordinary brake-head, substantially as described.

3. A metallic brake-beam provided at its middle with a fitting through which the brake-lever is passed at an oblique angle with the beam, said lever secured by a bolt passed through the lever at substantially right angles and engaged in a lug on the fitting, substantially as described.

In testimony whereof I sign this specification in the presence of two witnesses.

WILLIAM A. PUNGS.

Witnesses:
MARION A. REEVE,
FRANK P. HAINES.

for the grant of Letters Patent for an alleged new and useful Improvement in Metallic Brake-Beams, a description of which invention is contained in the Specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of Law in such cases made and provided; and

Whereas upon due examination made the said Claimant is adjudged to be justly entitled to a Patent under the Law.

Now therefore these Letters Patent are to grant unto the said William A. Pungs, his heirs or assigns for the term of seventeen years from the twelfth day of January, one thousand eight hundred and ninety-two, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this twelfth day of January, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States of America the one hundred and sixteenth.

[SEAL:]
Patent Office United States of America

CYRUS BUSSEY
Assistant Secretary of the Interior.

Countersigned:

W. E. SIMONDS
Commissioner of Patents.

0-2

Exhibit C.

S. E. T.

2–175.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify That the annexed is a true copy from the Records of this office of the Decision of the Commissioner, June 9, 1894, in the matter of the Interference, #15,830 Hien *vs.* Pungs, Subject-Matter: Brake Beam.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-seven and of the Independence of the United States of America the one hundred and twenty-first.

[SEAL:] Patent Office United States of America

S. T. FISHER,
Acting Commissioner of Patents.

0–2

No. 15,830.

U. S. PATENT OFFICE.

HIEN v. PUNGS.

Brake Beam.

Appeal from Examiners-in-Chief.

Application of Phillip Hien filed April 2, 1892, No. 427,485.

Patent granted to Wm. A. Pungs January 12, 1892, No. 466,834.

Mr. W. H. Singleton for Hien.
Messrs. Parker & Burton for Pungs.

This is an appeal taken from the decision of the examiners-in-chief, awarding priority of invention to Pungs, on the following issue:

> "A metallic brake beam, having its ends provided with a fitting made with a portion for embracing the beam and a portion for receiving the ordinary brake head."

Pungs filed his application for patent February 18, 1891, upon which his patent in interference was issued, January 12, 1892.

Hien filed an application for the invention in issue on November 28, 1888. Certain claims were rejected, and the application finally became abandoned on November 30, 1891, nine months after Pungs' application had been filed. Pungs proceeded with the prosecution of his case and secured his patent. February 17, 1892, a petition filed by Hien for the reinstatement of his case and for the declaration of an interference *nunc pro tunc* with Pungs, was denied, on the ground that he had failed to show that his delay was unavoidable. On rehearing, this decision was affirmed, March 14, 1892. On April 2, 1892, Hien filed a new application, containing no reference to his abandoned application, and on September 2, 1892, an interference was declared between this case and Pungs' patent. Subsequently Hien petitioned for another rehearing of the Commissioner's decision, refusing to reinstate his earlier application, which rehearing was also denied, December 19, 1892. (62 O. G., 316.)

Hien sums up his proofs in this interference, as follows: Sketches and disclosures, October, 1887; drawings, April 25, 1888; constructive reduction to practice by his application of November 28, 1888; actual reduction to practice, February 21, 1890. In his brief he states:

> "But whether intentional or not, Pungs has proved the exact date of his invention clearly, distinctly, and convincingly, viz: August, 1889, which is the earliest date the Examiner of Interferences finds to be proven."

But Hien insists that he is entitled to all the benefits of his abandoned application, and that his present application shall be considered as a continuance thereof, and on that contention cites Smith *v.* Goodyear Dental Vulcanite Co., 93 U. S., 501; Graham *v.* Geneva Lake Crawford Manufacturing Co., 11 Fed Rep., 138; International Tooth Crown Co. *v.* Richmond, 30 Fed. Rep., 775; Parmly *v.* Hochhausen, C D., 1891, 180, and the Cornplanter Patent 23 Wall., 181.

The case of Smith *v.* Goodyear Dental Vulcanite Co., *supra*, arose under statutory provisions before the act of 1870, which changed former provisions by inserting in section 32 of that act, now in substance section 4894 of the Revised Statutes, the words: "or upon failure of the appli-" cant to prosecute the same within two years after any " action therein."

In Graham *v.* Geneva Lake Crawford Manufacturing Co., *supra*, the second application was filed while the first was pending, the first amended by the withdrawal of parts of the invention, and the second claiming no such parts, and patents issued on both. In this case, therefore, no support can be found for the contention of Hien.

In the International Tooth Crown Co. *v.* Richmond, *supra*, the first application was refused, but the examiner became convinced that there was merit in it and suggested that a

new application be drawn, differing from the first in omitting superfluous matter, changing the description in certain particulars, whereupon the applicant adopted the first suggestion, presenting his new application while the first was pending. The court found that there was no act on the part of Low, the patentee, which was equivalent to the withdrawal of his first application or to an acquiescence in its rejection. He merely made a new application as a more convenient way of presenting the original application for the final action of the office after he had been assured that the rejection of the first application would be reconsidered and a patent would be granted on the second application. Both applications were, therefore, considered as parts of one continuous proceeding.

In Parmly *v.* Hochhausen, Hochhausen filed his application on July 31, 1890, for substantially the same subject-matter as that for which he filed his second application, April 23, 1891, requesting in a letter accompanying the second application that it might take the place on the files of the Patent Office of the former application, and it was accordingly held that the two formed a continuous proceeding.

In the case of Lindsay *v.* Stein, 20 Blatch., 370, a patent was applied for in October, 1874, the application rejected in November, 1874, and again in January, 1875, and nothing more was done upon it. In April, 1878, a new application was filed. It was held by Judge Blatchford that the first application was abandoned because not prosecuted within two years after its rejection, and that the patent granted upon the second application would be invalid if the invention covered by it were in public use or on sale for more than two years before the second application. The court said:

> "There is nothing to prevent a subsequent application. When made, it can derive no aid, as to time,

from the prior abandoned application, and the applicant must stand, as to defenses in suits upon the patent, as if the new application were the first application."

Since this decision the Supreme Court has announced the rule of equitable estoppel in reissues to cover intervening rights, no matter how promptly applied for. A logical extension of the rule would exclude the attempt to take back an invention voluntarily abandoned where intervening rights existed, excepting the case presented a clear and positive showing in applicant's behalf.

"It may be assumed that the law enacted to inspire and protect invention is the law of earnest enterprise, and demands earnest work. If negligence intervenes, the law demands explanation; and in the explanation, excuse. Sickness, poverty, or other involuntary disability may excuse, but the excuse should not have the consent of the applicant."

(Gates *et al. v.* Benson, C. D., 1870, 65.)

The office constantly recognizes the rule that an applicant contesting the right to an invention already patented must make out a case sufficiently strong to defeat that patent. It cannot be conceded that a rejected and abandoned application could have an effect, when the applicant acquiesced in the rejection without appeal or reservation; when he was represented by a solicitor capable of securing all he was entitled to; when he had means, and fails to excuse his negligence. Had Hien foreseen the efforts of Pungs he would, presumably, never have abandoned his case without exhausting all his right of appeal. His abandonment was voluntary and deliberate, and he must abide the legal consequences.

It is well settled that an abandoned application, even though accompanied by experiments which fall short of

practical use, cannot defeat a subsequent patent. (The Cornplanter Cases, 23 Wall., 181.)

It was held by Commissioner Mitchell, in Beach *v.* Fowler, C. D., 1889, 187, that an abandoned application establishes only a date of conception. The same ruling was also announced in Webster *v.* Sanford, C. D., 1888, 92. Following these decisions, Hien must rest his claim upon other proof than the mere filing of an application afterward abandoned. His rights under his new application must be established independently of his earlier case, if he would prevail over another inventor who has entered the field, is earlier in actual reduction to practice, and has consummated his title to the invention by securing a patent. Hien's second application contains no reference to the first, and the proceeding being wanting in continuity it must be held that his claimed constructive reduction to practice on the date of his abandoned application, cannot avail him in this interference. Such application is evidence only of conception and cannot defeat the patent to Pungs.

The decision of the examiners-in-chief is affirmed.

JOHN S. SEYMOUR,
Commissioner.

June 9, 1894.

[Endorsed:] Intf No 15830 Paper No 4. Hien *vs* Pungs Commr's Decision. Dated June 9, 1894. Recorded Vol 54. P—493—U. S. Patent Office, Copy made Jan 9 1897 4207/97

Exhibit D.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

PHILLIP HIEN, Appellant, v. W. A. PUNGS, Appellee. } No. 15,830. Appeal from the decision of the Commissioner of Patents in Interference.

PETITION.

To the Hon. Judges of the Court of Appeals of the District of Columbia.

Your petitioner, Phillip Hien, respectfully represents unto your Honors:

1. That he, Phillip Hien, is the true and original inventor of certain improvements in the manufacture of brake-beams, for which he made application for Letters Patent filed April 2, 1892, No. 427,485.

2. That said application was placed in interference in the United States Patent Office with the patent of W. A. Pungs, dated January 12, 1892, No. 466,834, the said interference being dated September 30, 1892, No. 15,830.

3. That such proceedings were had in said interference that evidence for both sides was taken and completed, the case presented to and decided by the various tribunals of the Patent Office and was finally decided by the Commissioner of Patents June 9, 1894, awarding priority of invention to the said W. A. Pungs.

4. That your petitioner, under date of May 12, 1896, notified the Commissioner of Patents of this appeal from his decision for your Honorable Court.

5. That your petitioner has complied with all the requirements of Secs. 4912 and 4913 of the Revised Statutes

of the United States to entitle him to the appeal prayed for, and your petitioner, therefore, prays that this appeal may be heard in due course and determined and that Phillip Hien may be declared to be the first, true and original inventor of the subject-matter of said interference, and that the said decision of the Commissioner of Patents may be reversed, and that the appellant may be allowed his costs in this behalf sustained, and such other relief as, in the opinion of your Honorable Court, may be meet and proper in the premises.

And your petitioner will ever pray.

PHILIP HIEN
per W H. SINGLETON
Attorney

June 2, 1896

A true copy
Test:
ROBERT WILLETT
Clerk
[Seal Court of Appeals, District of Columbia.]

Exhibit E.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Patent Appeal No. 49.

PHILLIP HIEN, *v.* WILLIAM A. PUNGS. } No. 49. Patent Appeals. Interference No. 15,830.

NOVEMBER 5, 1896.

SIR:

Please take notice that on Monday, the 9th day of November, 1896, at ten o'clock A. M., or as soon thereafter as

counsel can be heard, I shall present to the Court of Appeals of the District of Columbia the accompanying motion.

Respectfully,

THE COMMISSIONER OF PATENTS,
by W. A. MEGRATH.
Counsel.

To W. H. SINGLETON, Esq.,
Washington, D. C.

Due service accepted this 6th day of November, 1896.

W. H. SINGLETON,
Atty for Hien.

BEFORE THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Motion to dismiss.

To the Honorable the Justices of the Court of Appeals of the District of Columbia.

And now comes the Commissioner of Patents by his counsel and moves that the appeal of Phillip Hien, taken to this court June 2, 1896, from the decision of the Commissioner dated June 9, 1894, be dismissed for the reason that the appeal was not taken within the time provided for by the Rules of this Court.

Respectfully submitted,

THE COMMISSIONER OF PATENTS,
by W. A. MEGRATH,
Counsel.

November 5, 1896.

Endorsed: Court of Appeals, D. C. October Term, 1896. No. 49. Pat App. Phillip Hien, appellant, *vs.* Wm. A. Pungs. Motion of Commr. of Patents to dismiss appeal.

Court of Appeals, District of Columbia, Filed Nov. 7, 1896.
Robert Willett, Clerk.

A true copy
Test:
ROBERT WILLETT
Clerk

[Seal Court of Appeals, District of Columbia.]

Exhibit F.

PHILLIP HIEN, Appellant,
vs.
WILLIAM A. PUNGS. } No. 49 Patent Appeals.

This is an appeal taken on May 12, 1896, from a decision rendered by the Commissioner of Patents on June 9, 1894; and the appeal was not filed in this court until June 2, 1896, nearly two years after the rendition of the Commissioner's decision.

We have just determined, in the case of "In the matter of the application of George Bryant", that no such appeal can be entertained by us. It comes too late. There is no justification for the delay, and no attempt to excuse it. Whether the case is to be governed by the rules of this Court promulgated on September 29, 1894, whereby a limitation of forty days was provided for appeals, or by the rules in force prior thereto, which provided for a general limitation of twenty days for appeals to this court, the right of appeal is now barred. The theory of the appellant seems to be that he had two years wherein to file his appeal; and this theory is based upon section 4894 of the Revised Statutes

of the United States, wherein it is provided that "all applications for patents shall be completed and prepared for examination within two years after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unaviodable". But even if we assume that, before the promulgation of the rules of this court on September 29, 1894, there was justification for this theory, there was no justification for it after the date of such promulgation. The right of appeal is not a vested right that may not be altered by statute, or by rule of court made in pursuance of statutory authority to enact such rules. And when the rule of this court regulating the time for taking appeals was promulgated, the appellant became thereafter bound by it, and having the full time limited by the rule, he has no just cause of complaint.

The appeal in this case must be dismissed; and it is accordingly dismissed. The Clerk of this Court will certify this opinion and the proceedings in the cause to the Commissioner of Patents, in accordance with the law.

Endorsed: No. 49 Pat. Appeals. Phillip Hien, appellant, *vs.* William A. Pungs. Opinion of Court per Mr. Justice Morris. Court of Appeals, District of Columbia, Filed. Dec. 1, 1896. Robert Willett, Clerk.

A true copy,
Test: ROBERT WILLETT
Clerk.

[Seal Court of Appeals, District of Columbia.]

Exhibit G.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Patent Appeal No. 49.

PHILLIP HIEN, *vs.* W. A. PUNGS. } Interference No. 15,830.

Motion by Appellant for Reinstatement of Appeal.

Now comes the appellant, by his attorney, and moves for the reinstatement of the above entitled appeal and for a decision of the same upon its merits.

The grounds of the motion are:

First—That the Court of Appeals of the District of Columbia has no statutory authority to make a rule for the time of the entry of appeals from the Commissioner of Patents.

Second—That the rule of the Court of Appeals of the District of Columbia, promulgated September 29, 1894, imposing a limitation of forty days for appeals from the decision of the Commissioner of Patents, is not made in pursuance of statutory authority to enact such rule.

Third—That the rule of the Court of Appeals of the District of Columbia, prior to September 29, 1894, imposing a limitation of twenty days for appeals from the decision of the Commissioner of Patents, was not made in pursuance of statutory authority to enact such rule.

Fourth—That the Court of Appeals of the District of Columbia is without statutory authority to enact a rule providing for a limit of appeal of less than two years from the decision of the Commissioner of Patents.

W. H. SINGLETON,
for Appellant.

In view of the importance of the question raised by the within motion it is respectfully requested that a day be set for argument, an oral hearing be granted, and leave to file briefs.

W. H. SINGLETON,
for Appellant.

W. A. MEGRATH,
for Commissioner of Patents.

Endorsed: Court of Appeals, D. C. October Term, 1896. No. 49. Pat. Appeals. Phillip Hien, appellant *vs.* Wm. A. Pungs. Motion for reinstatement of appeal. Court of Appeals, District of Columbia, Filed Dec. 12, 1896. Robert Willett, Clerk.

A true copy.
Test:
ROBERT WILLETT,
Clerk.
[Seal Court of Appeals, District of Columbia.]

Exhibit H.

PHILLIP HIEN, Appellant,
vs.
W. A. PUNGS. } No. 49. Patent Appeals.

On motion for reinstatement of appeal.

The appeal in this case, which was from a decision of the Commissioner of Patents in an interference proceeding, was recently dismissed by this court on the ground that it had not been taken in due time, more than eighteen months having been allowed to elapse after the Commissioner's de-

cision before the appeal was sued out, notwithstanding that the rule of this Court prescribed that appeals should be taken within forty days after decision rendered. It was sought to evade the application of this rule upon the ground that the decision here appealed from had been rendered before the promulgation of the rule in question. But we held that, inasmuch as the aggrieved party might have appealed within the forty days after the promulgation of the rules and had given no explanation of his failure to do so or of his unusual delay, we could not now entertain the appeal.

The appellant now files a motion for the reinstatement of the appeal, basing it on the alleged invalidity of the rule of the court which prescribes a limitation of time for appeal, and which he claims to have been made without warrant of law and in violation of the limitation of two years prescribed by section 4894 of the Revised Statutes of the United States for the prosecution of applications for patents in the Patent Office. And leave is requested both to file briefs on the subject, and to submit oral argument.

We do not deem any argument, either oral or written, to be necessary; and we might have contented ourselves with the mere denial of the motion for reinstatement of the appeal, were it not that this seems to us to be an appropriate occasion to animadvert upon a practice that has been growing in this court and which we can not sanction.

Counsel in this court seem frequently to regard it as their duty to file motions for a rehearing, which the present motion virtually is, just as they file motions for a new trial in a *nisi prius* court. Counsel should not regard themselves under obligation to file such motions. While there are undoubtedly cases in which, from their great importance or the novel or doubtful character of the questions involved, rehearing may well be had, and may properly be sought, yet it

should be understood that the court always seeks in the first instance to bring the best judgment which it possesses, aided by all the lights which counsel give it in their briefs and arguments, to bear upon the causes submitted to it for its determination. If in such determination it commits error, the mistake is one of judgment to which all human action is liable. But it is expedient, in the interests of justice, that the determination, when made, should have the element of stability. Nor is it just to the court or to parties that argument should be held back until after decision, upon the chance that the judgment of the court might be favorable without consideration of the questions raised upon rehearing. There is a time assigned for argument; and all the questions legitimately proper to be raised should be raised at that time, and not subsequently.

As we have intimated, we cannot sanction the indiscriminate practice of filing motions or petitions for a rehearing. We do not question the good faith of counsel in the present case—for the question which they raise is a fair and legitimate question, although it should not have been postponed to the present time; but we think the practice, which this motion illustrates, is not one to be encouraged; and such motions in the future will receive but scant consideration, unless it is made very plainly to appear that the questions raised by them could not well have been raised at an earlier stage of the proceedings, or that the cause of substantial justice could not be subserved without their consideration.

With reference to the motion here interposed, we are of opinion that this court, under the statute which created it, had ample authority to frame rules to limit the time in which appeals might be taken from the decisions of the Commissioner of Patents; and that the rule limiting the time for taking such appeals to forty days is a valid and appropriate rule binding alike upon the court and upon

parties. We must, therefore, deny the motion of the appellant for the reinstatement of his appeal.

Endorsed: No. 49 Patent Appeals. Phill. Hien, appellant, *vs.* W. A. Pungs. Opinion of Court per Mr. Justice Morris. Court of Appeals, District of Columbia, Filed Jan. 4, 1897. Robert Willett, Clerk.

A true copy
Test: ROBERT WILLETT
Clerk.

[Seal Court of Appeals, District of Columbia.]

BRIEF.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1896.

Ex-Parte PHILLIP HIEN, Petitioner.

WRIT OF MANDAMUS.

Brief for Petitioner.

The grounds upon which this petition is based are as follows:

First: That the Court of Appeals of the District of Columbia has no statutory authority to make a rule for the time of the entry of appeals from the Commissioner of Patents.

Second: That the rule of the Court of Appeals of the District of Columbia, promulgated September 29, 1894, imposing a limitation of forty days for appeals from the decision of the Commissioner of Patents, is not made in pursuance of statutory authority to enact such rule, nor does it apply to petitioner's appeal.

Third: That the rule of the Court of Appeals of the District of Columbia, prior to September 29, 1894, did not impose a limitation of twenty days for appeals from the decision of the Commissioner of Patents, or if it did, it was not made in pursuance of statutory authority to enact such rule.

Fourth: That the Court of Appeals of the District of Columbia is without statutory authority to enact a rule providing for a limit of appeal of less than two years from the decision of the Commissioner of Patents.

The law applicable to this matter is as follows:

Rev. Stat., Sec. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor.

Rev. Stat., Sec. 4893. On the filing of any such application and the payment of the fees required by law, the Commissioner of Patents shall cause an examination to be made of the alleged new invention or discovery, and if, on such examination, it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner shall issue a patent therefor.

Rev. Stat., Sec. 4894. All applications for patents shall be completed and prepared for examination within two years after the filing of the application, and in default thereof, *or upon failure of the applicant to prosecute the same within two years after any action thereon of which notice shall have been given to the applicant*, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable.

Rev. Stat., Sec. 780. The Supreme Court, sitting in banc, shall have jurisdiction of and shall hear and determine all appeals from the decision of the Commissioner of Patents, in accordance with the provisions of section 4911 and section 4915, inclusive, of Chapter 1, Title LX, of the Revised Statutes, "Patents, Trade-Marks, and Copyrights."

An Act to establish a Court of Appeals for the District of Columbia and for other purposes. Approved February 9, 1893.

Sec. 6. That the said Court of Appeals shall establish a term of the Court during each and every month in each year excepting the months of July and August, and it shall make such rules and regulations as may be necessary and proper for the transaction of the business to be brought before it, and for the *time* and method of the entry of appeals and for giving notice of appeals thereto *from the Supreme Court of the District of Columbia*, and such other rules and regulations as may be necessary and proper in the premises.

Sec. 7. That any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, may appeal therefrom to the Court of Appeals hereby created; and upon such appeal the Court of Appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just: *Provided*, however, That all causes now pending before the said Supreme Court in general term, together with the original papers and record entries duly certified, shall by appropriate orders duly entered of record be transferred and delivered to the Court of Appeals hereby created, which said Court of Appeals is hereby vested with authority and jurisdiction to hear and determine the causes so transferred. The appellate power and jurisdiction of said general term is hereby abrogated and abolished, and no causes shall here-

after be heard in the said general term. Appeals shall also be allowed to said Court of Appeals from all interlocutory orders of the Supreme Court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of said Court of Appeals, whenever it is made to appear to said Court upon petition that it will be in the interest of justice to allow such appeal.

Sec. 9. That the determination of appeals from the decision of the Commissioner of Patents, now vested in the general term of the Supreme Court of the District of Columbia, in pursuance of the provisions of section seven hundred and eighty of the Revised Statutes of the United States, relating to the District of Columbia, shall hereafter be, and the same is hereby, vested in the Court of Appeals created by this act; and, in addition, any party aggrieved by a decision of the Commissioner of Patents in any interference case may appeal therefrom to said Court of Appeals.

An Act to Amend Sections 4, 6, and 10 of the Act of February 9, 1893, entitled: "An Act to establish a Court of Appeals for the District of Columbia and for other Purposes," approved July 30, 1894.

"Sec. 2. That section six of the act aforesaid be, and the same is hereby, amended so as to read as follows:

"Sec. 6. That said Court of Appeals shall establish by rule of court such terms of the court in each year as to it may seem necessary; *Provided*, however, that there shall be at least three terms in each year, and it shall make such rules and regulations as may be necessary and proper for the transaction of its business and the *taking* of appeals to said court. And said Court of Appeals shall have power to prescribe

what part or parts of the proceedings in the court below shall constitute the record on appeal and the form of bills of exception, and to require that the original papers shall be sent to it instead of copies thereof, and *generally to regulate all matters relating to appeals whether in the court below or in said Court of Appeals.*"

The Rules of the Court of Appeals of the District of Columbia promulgated June 5, 1893, provide as follows:

Rule XIX—6. The appeals from the Commissioner of Patents shall be subject to all the rules of this Court provided for other cases therein, except where such rules, from the nature of the case, or by reason of special provisions inconsistent therewith, are not applicable.

Rule IX—1. No order, judgment or decree of the Supreme Court of the District of Columbia, or of any justice thereof, shall be reviewed by the Court of Appeals unless the appeal shall be taken within twenty days, Sundays excluded, after the order, judgment, or decree complained of shall have been made or pronounced.

The Revised Rules for the Government and Practice of the Court of Appeals of the District of Columbia, promulgated September 29, 1894, provide:

RULE No. XX.

APPEALS FROM THE COMMISSIONER OF PATENTS.

"2. The appellant, upon complying with the preceding section of this Rule, shall file in the case a petition, addressed to the Court, in which he shall briefly set forth and show that he has complied with the requirements of sections 4912 and 4913 of the Revised Statutes of the United States, to entitle him to an appeal, and praying that his appeal may be heard upon and for the reasons assigned therefor to the Commissioner; and said appeal shall be taken within

forty days from the date of the ruling or order appealed from, and not afterwards."

As the proposition raised by the present petition is one that is absolutely novel, necessarily there is dearth of authorities thereon. However, there is one case decided by this Court which, while not bearing directly on the point raised, bears so firmly upon a cognate point that it seems to be conclusive upon the one raised.

This Court in Gandy *vs.* Marble, decided May 27, 1887, 39 O. G., 1423, gave this utterance:

"The jurisdiction of the application being transferred *pro tanto* to the Court by virtue of the bill in equity, it cannot adjudge that the applicant is entitled, according to law, to receive a patent, unless he shows to the satisfaction of the Court that the delay was unavoidable under an allegation to that effect in the bill. The presumption of abandonment, under section 4894, unless it is shown that the delay in prosecuting the application for two years and more after the last prior action, of which notice was given to the applicant, was unavoidable, exists as fully in regard to that branch of the application involved in the remedy by bill in equity as in regard to any other part of the application, whether so much of it as is strictly within the Patent Office, or so much of it as consists of an appeal to the Supreme Court of the District of Columbia under section 4911. The decision of the Court on a bill in equity becomes, equally with the judgment of the Supreme Court of the District of Columbia on a direct appeal under section 4911, the decison of the Patent Office, and is to govern the action of the Commissioner. It is, therefore, clearly a branch of the application for the patent, and to be governed by the rule as to laches and delay declared by section 4894 to be attendant upon the application."

And in Durham *vs.* Seymour, Commissioner of Patents, decided April 1, 1895, 71 O. G., pp. 601–603, Court of Ap-

peals of the District of Columbia, against whom this mandamus is asked, gave this utterance:

> "In Gandy *vs.* Marble it was said that,
>
> although the proceeding is not a technical appeal from the Patent Office, yet the proceeding is in fact, and necessity, a part of the application for the patent,
>
> and was consequently held that a delay of more than two years in filing the appeal after the last action upon the application had in the Patent Office was fatal under the provisions of section 4894."

ARGUMENT.

The above compendium of the laws, taken together with the authorities cited, would seem to warrant as a legitimate conclusion that the Court of Appeals of the District of Columbia, in so far as appeals from the Patent Office are concerned, is *pro hac vice* a part of the Patent Office, and that the limitation of Section 4894 applies to appeals taken to this Court as well as actions interior to the Patent Office proper.

The Court of Appeals of the District of Columbia takes a different view. That Court, in the last utterance made in the matter now sought to be brought before the present Court, says (see Record, p. 40):

> "With reference to the motion here interposed, we are of opinion that this court, under the statute which created it, had ample authority to frame rules to limit the time in which appeals might be taken from the decision of the Commissioner of Patents; and that the rule limiting the time for taking such appeals to forty days is a valid and proper rule, binding alike upon the Court and upon parties."

The issue, therefore, between petitioner and that Court is as to the authority of such Court to make a limit of appeal of less than two years.

The Court itself finds such authority in the statute cre-

ating it. It is obvious that no such authority is granted in any of the general statutes applicable to courts of the United States; and if such authority be found at all it must be found in the statute creating the lower court.

According to the terms of Section 4894 and the utterance of this Court in Gandy *vs.* Marble, it is clear that prior to the creation of the Court of Appeals of the District of Columbia the only limit of appeal by law from the decision of the Commissioner of Patents was two years. And the Supreme Court of the District of Columbia, the predecessor in appellate jurisdiction of the Court of Appeals of the District of Columbia, had no rule fixing a limit of appeal from the decision of the Commissioner of Patents.

As the lower court itself finds its authority in its organic law, and as its predecessor had no limit of appeal, and as this Court has said that the two-year limit is binding as well upon the Court sitting as an appellate court from the Commissioner of Patents as upon the Patent Office itself, it necessarily follows that the authority to make a limit of appeal of less than two years must be found in the statute creating the Court.

It will be noted that the Court itself in its decision dismissing petitioner's motion for reinstatement makes no specific reference to the statute wherein such authority is conferred, but simply states its conclusion that such authority is found there. In controverting the position of the lower court it is therefore necessary that a detailed examination must be made of all those portions of the organic law which could apply to this proposition.

In Section 6 of Act approved February 9, 1893, it is provided that the Court of Appeals of the District of Columbia

"shall make such rules and regulations as may be necessary and proper for the transaction of business to be brought before it, and for the time and method of the entry of appeals

and for giving notice of appeals thereto from the Supreme Court of the District of Columbia, and such other rules and regulations as may be necessary and proper in the premises."

Now, this section specifically provides that the Court of Appeals of the District of Columbia shall make rules and regulations "for the time and method of the entry of appeals and for giving notice of appeals thereto from the Supreme Court of the District of Columbia;" but nothing is said about conferring upon such Court the authority to make rules regulating the time of the entry of appeals from the Commissioner of Patents. And the fact that authority is conferred upon this Court to make rules and regulations "for the time and method of the entry of appeals * * * from the Supreme Court of the District of Columbia," and no mention is made of appeals from the Commissioner of Patents, warrants the conclusion that Congress did not intend to confer upon the Court authority to regulate the time of the entry of appeals from the Commissioner of Patents.

The Court of Appeals of the District of Columbia is given, under this Section 6, authority to make "such rules and regulations as may be necessary and proper for the transaction of the business to be brought before it." Under this authority the Court of Appeals can regulate the "*transaction*" of all patent business brought before it. But this simply relates to rules and regulations for the conduct of patent appeals after they are brought before the Court; and not as to rules and regulations for bringing them before the Court.

It is true that Section 6 of the Act approved February 9, 1893, has been amended by a later Act, but the above analysis of it has been made to show that in the original Act not only was not authority given to the Court of Appeals to limit the time of appeals from the Commissioner of Patents, but the very language of the Act itself precludes any such interpretation, because the fact that authority was

given to them to limit the time of one class of appeals clearly shows that the Congress did not intend to give to such Court authority to limit the time of the other class of appeals.

But this Section 6 was amended by Act approved July 3, 1894. If the former Section 6 had been intended to confer upon the Court of Appeals of the District of Columbia the authority to set a limit of appeal from the decision of the Commissioner of Patents, and if it was intended to continue such authority, then such authority should be found in the new Section 6; or if, on the other hand, original Section 6 did not contain such authority, and it was the intention of the Congress to supply such omission, then the new Section 6 would palpably and clearly set out such authority.

But upon considering Section 6 of the Act of July 30, 1894, it is submitted that no such authority, either express or implied, can be found.

Amended Section 6 provides that the Court of Appeals of the District of Columbia—

"shall make such rules and regulations as may be necessary and proper for the transaction of its business and the *taking* of appeals to said Court. And said Court of Appeals shall have power to prescribe what part or parts of the proceedings in the Court below shall constitute the record on appeal and the form of bills of exception, and to require that the original papers shall be sent to it instead of copies thereof, and *generally to regulate all matters relating to appeals, whether in the Court below or in said Court of Appeals.*"

Now, there is not a single provision in such Section 6 which authorizes the Court of Appeals of the District of Columbia to limit the time of appeal from the Commissioner of Patents. Such Court is authorized to make rules and regulations proper for the "*taking*" of appeals to said Court. The limit of appeal, it is submitted, has nothing to do with the taking of appeal. It is no part of the pro-

ceedings of the appeal. A limit of appeal is a mere question of time within which a certain thing must be done. It is in no sense whatever a part of the doing of the thing. The Court of Appeals of the District of Columbia, under amended Section 6, may have full authority to make all laws of regulation as to what an appellant from the decision of the Commissioner of Patents may do in the "taking" of his appeal, but has no authority under amended Section 6 to regulate the limit of the taking of the appeal.

Moreover, it will be seen that again, in amended Section 6, a distinction is made between appeals taken from the lower court and whatever other appeals might be taken to the Court of Appeals of the District of Columbia. The Court of Appeals of the District of Columbia is authorized "generally to regulate *all* matters relating to appeals, whether in the court below or in said Court of Appeals."

Now, the Patent Office is not a court. It is a part of one of the executive departments of the Government of the United States. Decisions of quasi-judicial nature are made in the Patent Office, but such office in no sense meets the definition of a court. Therefore, the excerpt just quoted from amended Section 6 can only relate to the lower *court*—that is, the Supreme Court of the District of Columbia—from which a certain class of appeals lie to the Court of Appeals. All matters relating to appeals from that Court the Court of Appeals of the District of Columbia has full authority to regulate. And the authority goes so far that the Court of Appeals may regulate all such matters, not only in the Court of Appeals itself, but even in the lower court, so extensive is the authority given to the Court of Appeals.

It therefore seems that the first and fourth grounds upon which this petition is presented are perfectly sound:

"1. That the Court of Appeals of the District of Columbia has no statutory authority to make a rule for the time of entry of appeals from the Commissioner of Patents.

4. That the Court of Appeals of the District of Columbia is without statutory authority to enact a rule providing for a limit of appeal of less than two years from the decision of the Commissioner of Patents."

However, even if it should be the opinion of this Court that the Court of Appeals of the District of Columbia has such authority, still, it is submitted on behalf of petitioner:

First: That there was no rule fixing a limit of less than two years binding upon petitioner at the time of the decision of the Commissioner of Patents against him;

Second: That the limit of appeal of forty days being promulgated subsequent to the decision of the Commissioner of Patents against petitioner was not binding upon petitioner.

To controvert petitioner's first position, it is necessary to piece together two of the rules of the Court promulgated before the decision of the Commissioner of Patents against petitioner. These two rules are found in the rules promulgated June 5, 1893, and are as follows:

"Rule XIX—6. The appeals from the Commissioner of Patents shall be subject to all the rules of this Court provided for other cases therein, except where such rules, from the nature of the case, or by reason of special provisions inconsistent therewith, are not applicable.

Rule IX—1. No order, judgment or decree of the Supreme Court of the District of Columbia, or of any justice thereof, shall be reviewed by the Court of Appeals, unless the appeal shall be taken within twenty days, Sundays excluded, after the order, judgment, or decree complained of shall have been made or pronounced."

To show the inapplicability of such rules to petitioner's case, it might be sufficient to cite the decision of the Court of Appeals of the District of Columbia in the present case,

and which is to be found in the record as "Exhibit F." While the Court does not specifically do so, yet it virtually makes no contention that such rules apply, but is content with dismissing petitioner's appeal on the ground that the rules of September 29, 1894, apply.

Moreover, in Bryant *vs.* Seymour, Commissioner of Patents, cited November 17, 1896, 77 O. G., 1599, the Court of Appeals of the District of Columbia, in deciding such case against the appellant, and descanting upon the rules promulgated September 29, 1894, says:

"Before these rules were promulgated there was much controversy in regard to the time to be allowed for the taking of appeals, and this rule was made for the express purpose of setting the controversy at rest."

It is obvious, from the decision in petitioner's case, and in the Bryant case, that the Court of Appeals themselves did not think that the rules of June 5, 1893, fixed a limit of appeal from the decision of the Commissioner of Patents.

It would seem, therefore, sufficient to dismiss this branch of petitioner's case without any further argument.

Again, if the Court of Appeals of the District of Columbia had authority to provide a forty-day limit from the decision of the Commissioner of Patents, such limit does not apply to petitioner's case, because the rule was promulgated September 29, 1894, at a date subsequent to the adverse decision of the Commissioner of Patents.

The Court of Appeals of the District of Columbia hold that this makes no difference. They held (Record, p. 36):

"The right of appeal is not a vested right that may not be altered by statute, or by rule of the Court, made in pursuance of statutory authority, to enact such rules. And when the rules of this Court regulating the time for taking appeals was promulgated, the appellant became thereafter bound by it, and having the full time limited by the rule, he has no just cause of complaint."

This utterance of the Court was to meet the contention of petitioner that he was entitled to a two-year limit of appeal. But the Court held the right of appeal not being a vested right, that it might be altered by statute or by rule of the Court, and that as soon as ever the forty-day rule went into effect, from that date appellant in that Court, petitioner here, was bound.

While the lower court might be of opinion that the right of appeal should be altered by statute or by rule of the Court, it could not have been of opinion that it could be entirely taken away by statute or rule of Court. As, therefore, the forty-day rule of the Court was made over one hundred days after the decision of the Commissioner of Patents, if such rule was to be retroactive, then appellant's right was entirely taken away. So, therefore, the Court held that the forty-day limit only attached as of the date of its promulgation.

On behalf of petitioner, it is submitted that a right of appeal is such a vested right that it cannot be taken away by subsequent enactment, although the method of pursuing the right may be changed. Therefore, if the forty-day limit applied to petitioner's application, we are forced to the decision that it can only apply as of date of its promulgation.

But if this position is to be assumed, does it not lead to the *reductio ad absurdum* that whatever limit of appeal the statute gave a rejected application prior to the promulgation of the forty-day rule, there would be added to that time forty days more. Or, in other words, it would be possible that the forty-day limit of the Court, acting upon a previously rejected application, would increase the legal limit to two years and thirty-nine days. If the Commissioner of Patents had rejected petitioner's application on September 30, 1892, and the forty-day limit was promulgated on Sep-

tember 29, 1894, and that limit attached to petitioner's right of appeal on the day of its promulgation, then petitioner would have had two years and thirty-nine days after the date of the decision of the Commissioner of Patents in which to take his appeal.

This line of reasoning would seem to show that the Court of Appeals of the District of Columbia is in error when they hold that the forty day-limit attached to petitioner's right of appeal on September 29, 1894.

It is therefore submitted that the Court of Appeals of the District of Columbia was in error in dismissing petitioner's appeal from the decision of the Commissioner of Patents on the ground that such appeal was not taken in time; and that the writ of mandamus prayed for by petitioner should be granted by this Honorable Court.

All of which is respectfully submitted.

W. H. SINGLETON,

Attorney and of Counsel.